Supreme Court, U.S.
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No. (1)

IN THE

Supreme Court of the United States

Ray Wolfgang,

Petitioner

v.

City of Pittsburgh Department of Personnel & Civil Service Commission,

Respondent

On Petition for a Writ of Certiorari
To the Supreme Court of Pennsylvania
Western District

PETITION FOR A WRIT OF CERTIORARI

Ray Wolfgang, pro se
1702 Meadville Street
Pittsburgh, PA 15214
412-322-0548

QUESTIONS PRESENTED

1. Being denied the opportunity for a complete Civil Service Commission hearing, to present material evidence and establish a full and complete record, can the Commission's February 2, 2006 dismissal of Wolfgang's appeal, seeking to enforce reinstatement to his Civil Service job with full back pay, be sustained?

2. Whether the Supreme Court of Pennsylvania, having previously found that Wolfgang is entitled to proceedings consistent with the Court's decision in Sadowski v. City of Pittsburgh, [741 A.2d 180 (Pa. 1999) sustaining Sadowski's reinstatement to position with full back pay], may now deny Wolfgang's Petition for Allowance of Appeal from the lower Court's decisions dismissing his appeal which seeks to enforce his job reinstatement with full back pay?

3. With respect to First Amendment protections, Is Wolfgang due award of back pay, reasonable expenses and attorney fees, reinstatement of fringe benefits including pension, reinstatement of seniority rights, and reinstatement to employment with the City of Pittsburgh; and what is the proper calculation for each of these elements?

4. Was the Pennsylvania Court System within its right to, avoid review of, and not provide a ruling

with respect to Wolfgang's claims for remedies available under provisions of the whistle blower law, municipal pension law, 42 US Code 1983 and 1988, and First Amendment infringements?

5. Does the City of Pittsburgh Department of Personnel & Civil Service Commission's frequent and ongoing failure to reinstate Wolfgang to job vacancies in accordance with the civil service law constitute ongoing acts of retaliation?

PARTIES TO THE PROCEEDING

Petitioner is:

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Respondent is:

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*In accordance with Rule 29. 4. (c), the Pennsylvania Office of Attorney General, Tom Corbett, 16th Floor, Strawberry Square, Harrisburg, PA 17120, telephone 717 787 3391 has been notified

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3. Decision of Civil Service Commission of the City of Pittsburgh denying reopening the record Jan. 31, 1992

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5. Opinion and Order of the Court of Common Pleas of Allegheny County, Nov. 14, 1995, SA 986-92, SA-3284 of 1991, G.D. 92-6181, SA 92-192 and SA 92-193, affirming Civil Service Commission denial of appeal, dismissing appeal and denying consolidation of cases

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7. Decision of Commonwealth Court of Pennsylvania denying application for re-argument, Aug. 23, 1996, No. 3566 C.D. 1995

8. Oct. 3, 2000 Order of the Supreme Court of Pennsylvania, 563 Pa. 188, 758 A.2d 1178, (2000), No. 0676 W.D. Alloc. Docket 1996, 563 Pa. 188, 758 A.2d 1178 (2000), reversing the June 20, 1996 Commonwealth Court Order of June 20, 1996 and remand to the trial court for proceedings consistent with Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa. 1999)

9. Order of Court of Common Pleas of Allegheny County, Dec. 17, 2002, No. S.A. 92-986, assigning case to Folino, J., for disposition in accordance with Supreme Court Order of Oct. 3, 2000

10. Order of Court of Common Pleas of Allegheny County, Dec. 18, 2002, S.A. 92-986, setting status conference

11. Order of Court of Common Pleas of Allegheny County, Jan. 17, 2003, ordering discovery and status conference, S.A. 92-986

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37. May 26, 2005 directive of City of Pittsburgh Civil Service Commission concerning availability of personnel file, S.A. 92-986

38. July 18, 2005 directive of City of Pittsburgh Civil Service Commission concerning availability of an "employee handbook", due date of Position Papers and scheduling of continuance of the hearing, S.A. 92-986

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55. April 27, 2004 directive by the City of Pittsburgh Law Department Attorney and Municipal Pension Fund Solicitor requiring litigation with City be resolved prior to Wolfgang's pension eligibility determination, S.A. 92-986

56. April 23, 2004 determination by the City of Pittsburgh Department of Law that Wolfgang is not due a City pension, S.A. 92-986

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58. January 24, 2006 determination by the city of Pittsburgh Municipal Pension Fund requiring direction from the City's Law Department to enable assisting in pension application and calculation of pension benefit, S.A. 92-986

59. November 2, 2000 ORDER OF COURT of the Court of Common Pleas of Allegheny County, Elaine Sadowski v. City of Pittsburgh, No. SA 96-260.

60. April 18, 1994 ORDER OF COURT of Common Pleas of Allegheny County affirming the March 19, 1992 Civil Service Commission of denial of Appeal, S.A. 986-92, filed April 25, 1994.

61. Certified Order of Commonwealth Court dated February 27, 1995, remanding to the Court of Common Pleas, S.A. 986-92

JURISDICTION

The order of the Supreme Court of Pennsylvania Western District, which denied Petition for Allowance of Appeal, entered on July 18, 2007 and the precedent decisions of the Commonwealth Court, February 20, 2007, and the Court of Common Pleas of Allegheny County July 27, 2006 affirmation of the City of Pittsburgh Civil Service Commission February 2, 2006 determination stemming from the Pennsylvania Supreme Court's October 3, 2000 Order are included for review, (see Appendix Section i, pp 11-64). The jurisdiction of this Court is invoked under 28 U.S.C., 1257(a), and Rule 10 (b) and (c). 28 U.S.C., 2403 (b) regarding the Constitutionality of Pennsylvania laws may apply and as such the Office of Attorney General of the State of Pennsylvania has been notified in accordance with Rule 29. 4. (c).

CITATION OF THE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS INVOLVED (see Appendix Section v. [1(f)], pp 68-76 for verbatim text)

A. Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1423. Protection of employees

B. Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1424. Remedies

C. Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69 Chapter 25, 43 P.S. 1425. Enforcement

D. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, (section 20.1)

E. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, (section 20.1)

F. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, RULES OF THE CIVIL SERVICE COMMISSION CITY OF PITTSBURGH

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I. 42 United States Code, TITLE 42—THE PUBLIC HEALTH AND WELFARE, CHAPTER 21—CIVIL RIGHTS, SUBCHAPTER I—GENERALLY, Sec. 1988, Proceedings in vindication of civil rights
(b) Attorney's fees

J. The United States Constitution, First Amendment

K. The United States Constitution, Fourteenth Amendment, Section 1.

L. City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23582 Section 2.

M. City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23581 Section 1. Definitions.

N. City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23581et seq.

O. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S., Rules of the Civil Service Commission, Rule XI, Section 7.

P. Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1424. Remedies, (d)

STATEMENT

(see Appendix Section v. [1(g)(i)], pp 77-115 for summary of the federal questions raised and how they were passed on by each court)

Wolfgang was a sixteen year employee of the City of Pittsburgh in 1991 when he made reports of wrongdoing by the Municipal Pension Fund Board.[1] The wrong doing was costing the Pension Fund nearly $1 million per year.[2] [These reports were later confirmed by the Pennsylvania Auditor General's Audit, for the period January 1, 1990 to December 31, 1991 which was released August 7, 1992, p.51, "Finding No. 3-Improper Early Retirement Window"][3]. Subsequent to Wolfgang's reports of wrong doing he was unlawfully terminated under authority and signature of the Mayor, on October 2, 1991, from his job as Project Engineer. The Mayor had motive to silence Wolfgang because the improperly enhanced pensions which Wolfgang had reported were being approved to only particular groups or particular individuals that the Mayor's administration selected.

As a Project Engineer in the non-competitive class Wolfgang enjoyed the expectation of continued employment and thus property rights to his Civil Service protected job, the protections afforded by the General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23431 et seq., and the Whistleblower Law, Act of

December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1421 et seq., relating to the highest form of protection offered by the First Amendment of the United States Constitution regarding speech. Wolfgang's unlawful termination was carried out under the pretext of an economy reduction. Wolfgang had the most years of seniority of all Project Engineers as well as specific departmental seniority over various others, but he was the only Project Engineer terminated. At the time there was active Project Engineer job postings for which Wolfgang applied, and the City accepted his application October 7, 1991, (R.R. 88).[4] Wolfgang appealed his termination to the City of Pittsburgh Civil Service Commission which conducted hearings on November 12, and 26, 1991. At the hearings Wolfgang brought forth the issue of political firing as result of him raising questions about the legality and use of pension money.[5] (R.R. 82-83)

On December 19, 1991, just 78 days after Wolfgang's first unlawful termination, Wolfgang was removed from his second paid City job as one of two Elected Employee Representatives on the Municipal Pension Fund Board. The Pension Fund and its Board are organized under the provisions of the Pension Act, City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23582, (Section 2), Administration. Wolfgang had just been re-elected, December 4, 1991, to a four year term to begin January 1, 1992. The Mayor's pretext for personally sponsoring the resolution for Wolfgang's

removal from his paid Pension Board job was that he has not been an employee since October 2, 1991.[6] However, Wolfgang was an employee, in his paid job as employee representative on the Pension Board, under the definitions in the City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23581, Definitions, (Section 1), and he was receiving regular remuneration each two week pay period with deductions for income tax, City and School tax, F.I.C.A., and Pension.[7] This removal was a premeditated display of blatant retaliation orchestrated through the personal efforts of the Mayor who read from a prepared sheet containing the resolution.

Subsequently Wolfgang filed timely suits, with the Court of Common Pleas of Allegheny County at SA-3284 OF 1991, G.D. 92-6181, SA92-192, and SA 92-193, regarding whistleblower matter and his removal from his paid position on the Pension Board.

Wolfgang's appeal from unlawful termination under the General Civil Service Law, and companion complaints regarding violation of the Whistle Blower Law and its components relating to infringement on Constitutional guarantees regarding speech and due process, and the City of Pittsburgh Municipal Pension Fund Act, proceeded through the Pennsylvania Courts.[9] On September 23, 1996 Wolfgang Petitioned for Allowance of Appeal to the Pennsylvania Supreme Court. Question 1.G. of the Petition asked, "was the decision made under due

process..." and regarding abolishment of Wolfgang's position, "that the abolishment was mere pretense or subterfuge." Question 2. asked "with respect to the Commonwealth Court's nondetermination of specific whistle blower law claim as, "a question which is not before us", ...and as affecting the highest form of Constitutional speech?"

October 3, 2000 the Pennsylvania Supreme Court, 563 Pa.188, 758 A.2d 1178, (2000), granted Petition for Allowance of Appeal, Reversed the Commonwealth Court's denial of Wolfgang's appeal and Remanded the case to the trial Court for proceedings consistent with the Court's decision in Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa. 1999). In Sadowski the Court upheld the Court of Common Pleas March 14, 1997 ORDER, at S.A. 260 of 1996, reinstating Sadowski to her position with full back pay.

In spite of the October 3, 2000 Supreme Court Order, for proceedings consistent with Sadowski, the City of Pittsburgh did not reinstate Wolfgang. The City also failed many times to reinstated Wolfgang as required, [by General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, (section 20.1), last sentence of "second" paragraph], to vacancies in positions in the former job class from which Wolfgang had been unlawfully terminated. The City repeatedly appointed new appointees to vacancies in the positions of Project Engineer and Project Manager

without first reinstating Wolfgang. Wolfgang was qualified for Project Engineer and Project Manager, both of which are in the non-competitive class, and for which Wolfgang was on eligibility lists as a qualified candidate.[10]

Nor did the City make back pay recompense.

On April 22, 2002 and June 5, 2002 the Municipal Pension Fund issued written calculation of the pension benefit which Wolfgang would be entitled upon attaining age 50.[11]

On September 9, 2002 Wolfgang filed Complaint in Mandamus, in the Court of Common Pleas of Allegheny County, seeking to enforce his reinstatement, with full back pay, interest and emoluments appertaining thereto. On April 17, 2003 the Court of Common Pleas of Allegheny County held the Complaint in Mandamus in abeyance and remanded the matter to the Civil Service Commission for determination.

The Civil Service Commission conducted an initial hearing in the matter on September 11, 2003.

Upon Wolfgang attaining age 50 in January 2004 the Municipal Pension Fund and City Law Department issued administrative determinations blocking Wolfgang from receiving the reduced early retirement pension benefit he was due. A February 10, 2004 determination by the Pension Fund solicitor

required "As to the availability to reinstate your pension, it is a condition precedent that you be employed by the City. Until you have confirmed your employment status, it would be premature to discuss with you the manner in which you can reinstate these benefits." Additional determinations, including directions given at a July 15, 2004 meeting of the Pension Board, indicated that the Pension fund could not do anything until Wolfgang's employment status/reinstatement is validated by the City Law Department.[12] [see position paper EXHIBIT FF pp. 9-10, 12, 13, 15, 17, 20-23 of the July 15, 2004 Pension meeting transcript]

The Civil Service Commission resumed hearings on May 12, 2005 and July 15, 2005 as well as setting a procedural plan that would include additional hearing after the parties submitted "Position Papers" outlining the testimony and evidence anticipated to be forthcoming during that future hearing.[13 & 14 & 15] [City Reproduced Record pp 322-323], [City Supplement to the Reproduced Record pp 252-255], and [the July 18, 2005 directive of the City of Pittsburgh Civil Service Commission stating: "The Commission declined to schedule a continuance of the hearing until after they receive and review the position papers. You will be properly notified of the hearing continuance date."]

After Wolfgang timely submitted his "Position Paper" on August 12, 2005 he regularly requested resumption of the hearing as previously outlined by

the Commission in prior proceedings. The "Position Paper" revealed the evidence in hand as well as the additional testimony and documents to be obtained at the upcoming Civil Service hearing. The "Position Paper" included calculations and summation of each two week pay amount withheld as result of his unlawful termination, including benefits and interest, back to the October 2, 1991 termination date. The total projected through January 1, 2006 is $2,215,341. Out of pocket expenses, pension benefit and reasonable fees for the periods of time during which Wolfgang was represented by attorneys were itemized in the claim for damages,[16] [pp 43-45 of the "Position Paper"]. Wolfgang also sought the Civil Service Commission's public records which would reveal each incident where new appointees had been appointed to Project Engineer or Project Manager positions instead of reinstating Wolfgang,[18] [Exhibit EE of the "Position Paper"]. These records are to be open to public inspection in accord with the General Civil Service Law, Section 21 and the Commission's own Rule XVII, Section 1; but were never provided.

Testimony and evidence from City experts in the Department of Personnel and Civil Service Commission to establish, on the record, the absence of restriction which would prohibit Civil Service employees from holding a second job and earning pay and benefits on that second job was also sought. Wolfgang anticipated testimony that these second job earnings and benefits are not deducted from any other Civil Service employee pay checks,[17] [page 33,

item 1, of the "Position Paper"]. The City of Pittsburgh civil service system is a complete and exclusive system apart from the exempt system set by City Code.

The basis of the claims, in the "Position Paper" were premised on the protections and remedies authorized in the General Civil Service Law, the Whistle Blower Law, and the First and Fourteenth Amendments to the United States Constitution.[19] The issues relating to these Laws were first raised at the Civil Service Commission and Court of Common Pleas of Allegheny County in 1991 and 1992 and carried through to the September 23, 1996 Petition for Allowance of Appeal to the Pennsylvania Supreme Court, who granted the Petition October 3, 2000, reversed the lower court and remanded to the trial court.

By letter dated February 8, 2006 the Civil Service Commission issued its February 2, 2006 FINDINGS OF FACT AND CONCLUSIONS OF LAW and ORDER. The Commission concluded: "We find that Mr. Wolfgang did not experience any damages and accordingly dismiss his appeal."
The Commission did this without completing the hearing as they had previously set forth plans.[20] [appellants Notice of Appeal at court of common pleas, p 4 and 6/26/2006 City's Supplement to the Reproduced Record, S.R.R. p 252 beginning on line10 to S.R.R. p 255 line 8 and S.R.R. p 269 beginning on line 15 to line 19]. Nor did the Commission mention

Wolfgang's claims regarding Whistleblower Law and the First Amendment and remedies thereto.

By cutting short the pre-established procedures, the hearing as previously set forth by the Commisssion, the Commission did not provide opportunity for Wolfgang to question expert City representatives to obtain and present material evidence, and to acquire documents in the possession of the City, necessary for a full and complete record.

The Civil Service Commission's February 2, 2006 ORDER prevented Wolfgang from obtaining proposed evidence and testimony concerning City practices with respect to pension benefits, City policy regarding the absence of second job/outside employment restrictions of Civil Service employees, clarification of and additional testimony regarding benefits and pay rates, and to obtain the appointment records of Project Engineers and Project Managers as related to vacancies that Wolfgang should have been reinstated under provisions of the Civil Service Act, Section 20.1. A complete record including evidence of this nature is needed by the Commission for fact finding necessary to draw appropriate conclusions of law. The plan to obtain this information was outlined in Wolfgang's "Position Paper" pp. 33 to 36.[21]

The Commission dismissed Wolfgang's appeal citing only "that Mr. Wolfgang's dismissal was in violation of Sadowski v. City of Pittsburgh, 741 A.2d 180

(Pa.1999)", (page 1 and page 4 of their Findings of Fact and Conclusions of Law). There was no mention of the Whistleblower nor the Constitutional issues raised by Wolfgang.

On February 28, 2006 Wolfgang appealed the Civil Service Commission's dismissal of his appeal for reinstatement with full back pay, to the Allegheny County Court of Common Pleas. Paragraph item 6 of the Notice of Appeal alleged "The record is not full and complete because the hearing was not completed after submission of the "Position Paper" as the Commission had earlier set forth on July 7, 2005 the steps in the schedule...". Furthermore the Notice of Appeal alleged findings not consistent with the testimony taken during the portions of the proceedings which were conducted, that the findings capriciously disregarded the evidence, and that the findings are ambiguous and erroneous. Paragraph item 7 of the Notice of Appeal states the alleged unlawful acts of the City to include violations of "the Civil Service Act, the Whistle Blower Law, Wolfgang's First and Fourteenth Amendment Rights, and other laws, which the City willfully violated with malicious intentions, ...". Paragraph item 9 of the Notice of Appeal contains fourteen pages enumerating the erroneous statements and misrepresentations made by the Civil Service Commission. The appeal was premised on the same violations carried through to the Pennsylvania Supreme Court for which the Court had granted Petition for Allowance of Appeal October 3, 2000-

with two exceptions. There was a new claim relating to due process stemming from the Commission's February 8, 2006 dismissal without completing their hearing as they had previously set, and, second, Wolfgang reiterated the issue of ongoing retaliation each time the City did not reinstate him in conformance with the General Civil Service Law, Section 20.1.[22]

Briefs were Ordered by the Court of Common Pleas of Allegheny County. Wolfgang cited the applicable remedies of the General Civil Service Law, the Whistle Blower Law, the United States Code, Chapter 21, Subchapter I, Sections 1983 and 1988 and the City of Pittsburgh Municipal Pension Act in support of his demands for reinstatement with full back pay plus expenses and attorney fees at pp. 50 to 62 of the Brief.[24] The Brief also included detailed calculations of full back pay and pension damages, and out of pocket expenses as Exhibits, (roman numerals), I, II, IIA, X, XVII, XXIII.[25]

The Court of Common Pleas of Allegheny County held argument in the Judges Chamber on July 24, 2006.

On July 27, 2006 the Court of Common Pleas of Allegheny County issued MEMORANDUM and ORDER OF COURT affirming the Civil Service Commission's dismissal of Wolfgang's appeal. The MEMORANDUM, [on p 2], claims "The Commission then conducted a full evidentiary hearing on the

matter." and then the Court relied upon that claim of a full evidentiary hearing being conducted to establish the Courts standard for review:

> "Where a full and complete record is made of the proceedings before a municipal civil service commission a reviewing court must affirm the adjudication unless it is in violation of the constitutional rights of the appellant or not in accordance with law, the procedural provisions of the local agency law are violated or a finding of fact of the commission necessary to support its adjudication is not supported by substantial evidence."

No comment regarding the Whistle Blower Law nor the Municipal Pension Fund Act, Constitutional provisions, and 42 US Code 1983 and 1988 questions were issued.

August 9, 2006 Wolfgang appealed to the Commonwealth Court of Pennsylvania. Question 5.a., of the Statement of Questions Involved, contained within the Brief for Appellant inquires: "Did the Civil Service Commission's unannounced modification to the Commission's pre-established conduct of the hearing preclude employees, [Wolfgang], right to opportunity for pertinent testimony?" The issues regarding remedies of the General Civil Service Law, the Whistle Blower Law and the United States Code, Chapter 21, Subchapter I, Sections 1983 and 1988 and the City of Pittsburgh Municipal Pension Fund Act, in support of his claim for reinstatement with full back pay plus expenses,

pension benefits and attorney fees were reiterated in the questions presented. (See Brief for appellant, p. 4, STATEMENT OF QUESTIONS INVOLVED).[26]

The Commonwealth Court of Pennsylvania filed MEMORANDUM OPINION and ORDER February 20, 2007 which affirmed the Court of Common Pleas of Allegheny County July 27, 2006 ORDER.

Based on page 6 and 7, of the MEMORANDUM OPINION, the Commonwealth Court of Pennsylvania's review of the questions raised by Wolfgang were narrowed by the Court as they stated: "The City also contends that various legal theories raised by Wolfgang are outside this court's jurisdiction because Wolfgang did not, and could not, raise them before the Commission." and later;

> "We agree with the City that this appeal is limited to those issues properly raised before and decided by the Commission. Pa. R.A.P. 1551(a). Here, as agreed to by the parties, the only matter decided by the Commission was the proper calculation of damages resulting from Wolfgang's improper dismissal under the Civil Service Act. This court is limited to determining the appropriateness of that relief."

And on page 10 the Commonwealth Court states;

> "Beginning with the City's "real" reason for maliciously terminating Wolfgang, Wolfgang

> charges that the City violated his rights under the First Amendment and the Whistleblower Law, pursued an unnecessarily vexatious fifteen-year litigation and continues to persecute Wolfgang and engage in cover-up tactics." "As previously discussed, these matters are not before us."

The Commonwealth Court's MEMORANDUM OPINION stated: "We note that nothing in the Supreme Court's remand Order expressly directs that Wolfgang be reinstated or that he be awarded back pay or any other damages." Five cases cited to support affirmation of the Civil Service Commission's dismissal however did include reinstatement with various calculations being used to calculate back pay awards. Delliponti v. DeAngelis, 545 Pa. 434, 681 A.2d 1261 (1996), Cornman v. City of Philadelphia, 380 Pa. 312, 111 A.2d 121 (1995), Steiner v. City of Reading, 341 Pa. 164, 19 A.2d 283 (1941), Seltzer v. City of Reading, 340 Pa. 573, 17 A.2d 872 (1941), Seltzer v. City of Reading, 30 A.2d 177 (Pa. Super. 1943).

On March 21, 2007 Wolfgang Petitioned the Pennsylvania Supreme Court for Allowance of Appeal asking for review of the Commonwealth Court of Pennsylvania and the Court of Common Pleas of Allegheny County affirmation of the City of Pittsburgh Civil Service Commission's dismissal of his, appeal seeking reinstatement with full back pay. The questions presented for review were included in

Section (3) of the Petition for Allowance of Appeal. On p. 11 of the Petition for Allowance of Appeal Wolfgang asks;

> "With respect to the Civil Service Commission's cancellation of a hearing in contradiction to the Commission's prior directions that the hearing would take place; was the Civil Service Commission's Order of February 2, 2006, dismissing Wolfgang's claim for reinstatement with full back pay made under the Fourteenth Amendment due process protections affording fair opportunity to Wolfgang to prove, on the record, the lack of work rules or restrictions that if in existence, would prohibit City employees, including Wolfgang, from Earning second job or outside job pay and benefits in addition to their City job pay and benefits; and was due process under the protections of the Fourteenth Amendment afforded to Wolfgang for inquiry into further clarification and explanation of the value of benefits and wages earned by Wolfgang at the time of his unlawful termination, and the City's concealment of records pertaining to vacancies in positions which Wolfgang should have been reappointed in accordance with the General Civil Serve Law, Act...".

Questions pertaining to applicability, protections and remedies of the Whistleblower Law, General Civil Service Law, and the First Amendment of the United

States Constitution, and 42 USC 1983 and 1988, and the City of Pittsburgh Municipal Pension Fund Act were also set forth in section (3) THE QUESTIONS PRESENTED FOR REVIEW of the petition.[27] Section (8) APPENDIX 3 of the petition included an index of the evidence with specific reference to its location within the record in support of Wolfgang's claims. Copies of portions of the referenced record were also included in this appendix. The appendix included side by side comparison charts of testimony from the record to illustrate the Commission's erroneous and ambiguous findings of fact, some of which are based on speculation and conjecture.

The Supreme Court of Pennsylvania Western District July 18, 2007 ORDER denied the Petition for Allowance of Appeal without reason or comment.

REASONS FOR GRANTING THE PETITION

I. On October 3, 2000 the Supreme Court of Pennsylvania remanded the case to the trial court. Subsequent to the Supreme Court remand the Court of Common Pleas of Allegheny County directed Wolfgang by its April 17, 2003 Order: "That the within matter is remanded to the City of Pittsburgh Civil Service Commission; and that plaintiff is granted leave to petition said Civil Service Commission for hearing and determination."

The proceedings, at the Civil Service Commission were cut short thus depriving Wolfgang the opportunity to present a full case and develop a complete record. This reason by itself should be sufficient to reverse the dismissal of Wolfgang's appeal in the Pennsylvania court system.

II. When the Commission dismissed Wolfgang's appeal the only cited authority was "that Mr. Wolfgang's dismissal was in violation of Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa.1999)", (page 1 and page 4 of the Commissions Findings of Fact and Conclusions of Law).

Wolfgang's appeal had included claims premised on the Pennsylvania Whistleblower Law and the First and Fourteenth Amendments to the United States Constitution and City Pension law matters. The

Whistleblower Law, section 1424.(d) Civil service employees, provides " An employee covered by civil service who contests a civil service action, believing it....may submit as admissible evidence any or all material relating to the action as whistleblower and to the resulting alleged reprisal." The Common Pleas Court made no specific determination on these matters.

When the Commonwealth Court got the case they too concluded that the only matter decided by the Commission was the proper calculation of damages resulting from Wolfgang's improper dismissal under the Civil Service Act. (See p. 7 of the February 20, 2007 MEMORANDUM OPINION.)

Although the City contends that Wolfgang's unlawful termination was not merely pretext, of an economy reduction, they have never provided a defense, to Wolfgang's Whistle Blower Law action, in accordance with the provisions of that law, Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1424.c, which requires the City to prove by a preponderance of the evidence that the City's termination of Wolfgang was for separate and legitimate reasons which are not merely pretextual.

The testing under Garcetti v. Ceballos, United States Supreme Court, 361 F.3d 1168 is satisfied by Wolfgang as, first, his Project Engineer job did not encompass any of the pension matters for which he made reports of wrong doing. The matters were also

of public concern as the pension fund is financed in large part by City and State revenues. The second question; whether the government employer had adequate justification for treating Wolfgang differently can hold true only if the City were to argue Wolfgang was affecting its operation –those operations being the conduct, by the city and its pension board, of making improper pension payments. But the conduct of improper or illegal activity is not within the sphere of efficient and effective governmental operations.

The Supreme Court of Pennsylvania's denial of Wolfgang's Petition for Allowance of Appeal lets Wolfgang's claims with respect to the Constitution, the Whistleblower Law, and the City of Pittsburgh Municipal Pension Fund Law conclude without review by a competent court. The Pennsylvania Supreme Court was obligated to provide a remedy for the violation of a Constitutional Right in both their July 18, 2007 ORDER as well as their October 3, 2000 ORDER. Since 1991 the Pennsylvania court system has played a shell game challenging Wolfgang to bet on which court he must appear. The granting of this Petition for a Writ of Certiorari is necessary to alleviate this incomprehensible, inequitable and unequal treatment by the Pennsylvania Courts.

III. Wolfgang is due reinstatement to Civil Service employment with the City of Pittsburgh because the General Civil Service Law, Act of May 23, 1907, P.L.

206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, (section 20.1) specifies that employees terminated for economy reasons are to be reinstated as follows: "Whenever the number of such employees shall be again increased in numbers, or if any vacancies occur, the employees suspended under the terms of this act shall be reinstated to that former class before any new appointees are appointed in reverse order to their suspensions."

The reinstatement requirement of Section 20.1 of held true prior to the October 3, 2000 Pennsylvania Supreme Court Order and it holds true after the October 3, 2000 Order. During the 16 years since Wolfgang's unlawful suspension there has been many new appointees to the positions of Project Engineer, and Project Manager, which are both in the non-competitive class.

Although Wolfgang was not permitted full opportunity, at the Civil Service Commission hearing, to elicit testimony and documents from City experts he did identify by name 3 individuals appointed without first reinstating Wolfgang,[28] [see p 12, item 41 and p 13, item 44 of position paper] Evidence in the form of the City's own writings supported the claims of instances where new appointees to Project Engineer and Project Manager had occurred without first reinstating Wolfgang. [see position paper Exhibit S which is excerpt of the 2005 City budget indicating creation of both Project Engineer and Project Manager positions within the

Public Works department where none existed in 2004, and Exhibit L which is City writings documenting appointment of a new appointee to the position of Project Engineer on July 27, 1992.] The City has covered up other instances, of Section 20.1 violations, by withholding information Wolfgang has repeatedly requested regarding new appointees to these two positions.[29] The Civil Service Commission was made aware of this in Wolfgang's "Position Paper", as was each successive Court in Wolfgang's appeals. The Commission and the Pennsylvania Court System is condoning the City's ongoing and perpetual retaliation against Wolfgang. The only opportunity for relief lies with the United States Supreme Court.

The cases, cited in the Commonwealth Court of Pennsylvania's February 20, 2007 MEMORANDUM OPINION, (pp. 8 and 9), included reinstatement of improperly terminated employees as a common feature: Cornman v. City of Philadelphia, 380 Pa. 312, 111 A.2d 121 (1995), Steiner v. City of Reading, 341 Pa. 164, 19 A.2d 283 (1941), In Seltzer v. City of Reading, 340 Pa. 573, 17 A.2d 872 (1941), Seltzer v. City of Reading, 30 A.2d 177 (Pa. Super. 1943), Delliponti v. DeAngelis, 545 Pa. 434, 681 A.2d 1261 (1996).

A consistent, routine, and common remedy is reinstatement of the improperly terminated employee. Wolfgang believes he is due reinstatement as well.

The October 3, 2000 Order of the Pennsylvania Supreme Court provides for proceedings in Wolfgang's case to be consistent with the Court's decision in Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa. 1999). There is no reason to believe that the Pennsylvania Supreme Court's October 3, 2000 Order taken with its citation in Sadowski, intended straying from their doctrine of plain or clear meaning to plain language in their order relating to Wolfgang. Review of the Sadowski OPINION reveals at least seven instances where the Court discusses or reiterates the plain meaning or intentions of plain language; Line 2 of p 6, line 5 of p 6, line 17 of p 6, line 11 of p 7, line 13 of p 7, line 6 of p 8, and line 6 of p 9. When the Pennsylvania Supreme Court says the Wolfgang case is to be resolved in accordance with Sadowski, whereat they sustained the Common Pleas Court Order reinstating her to position with full back pay, there is no reason to believe they meant other than the clear meaning of that plain language. The Common Pleas Court Order in Sadowski was a plain language single sentence Order:

> "AND NOW, to wit, this 14 day of March, 1997, it appearing to the Court that the Civil Service Commission of the City of Pittsburgh did not have sufficient substantial evidence to support the termination of Elaine Sadowski, Appellant in the within captioned case, it is ORDERED and DECREED that Appellant, Elaine Sadowski is

hereby reinstated to her position with full back pay." [S.A. 260 of 1996]

The Whistleblower Law, Act of December 12, 1986, P.L. 1539 No. 69 Chapter 25, 43 P.S. 1425., provides for reinstatement of the employee as follows: "Enforcement A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee....". Wolfgang believes the actions of the City of Pittsburgh are egregious enough to warrant his reinstatement and restoration of his benefits and seniority.

IV. Award of back pay is authorized in the Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69 Chapter 25, 43 P.S. 1425.

The Common Pleas Court in Seltzer v. City of Reading, 30 A.2d 177 (Pa. Super. 1943) directed damage calculation for the full amount of his back pay, with interest, less amount of his earnings in other employment during the period of Selzer's improper discharge. This Judgment was affirmed on appeal. Wolfgang's calculation of back pay with interest, [projected through January 1, 2006: $2,215,341], was submitted at the Civil Service Commission hearings and also contained in his position paper as Exhibit, [roman numeral I]. The Commission could have easily used this amount for deducting earnings in other employment which the City and the Commission claimed to be $618,072.09.

[see page 2, line 6 of the Commission's February 2, 2006 Findings of Fact and Conclusions of Law.] The difference being $1,597,268.91 due Wolfgang.

The Supreme Court in Seltzer v. City of Reading, 340 Pa. 573, 17 A.2d 872 (1941), considered Seltzer who had been discharged summarily and placed in another position in the City service at a greatly reduced salary. Here Seltzer was working for the city and there was no consideration as to whether or not Seltzer had a second job outside of the City. The Order was for reimbursement of the difference between the salary which he received, (from his lower paying City job), and that to which he is entitled, (at his rightfully due higher paying City Job). Using this reasoning in the instant matter where the City failed to mitigate damages by reinstating Wolfgang, which they were obligated by the General Civil Service Law section 20.1, results in an award of back pay. The difference between Wolfgang's full back pay calculation, $2,215,341, and the amounts the City already paid Wolfgang since his unlawful termination, $0.00, is $2,215,341. Although the City had opportunity and was obligated by the Civil Service Law to reinstate Wolfgang, and to have paid him significantly more than $0.00, the City chose not to.

In the Sadowski case, 741 A.2d 180 (Pa. 1999), [SA 96-260], where whistleblower retaliation and First Amendment infringements were not at issue in the Pennsylvania Supreme Court OPINION, Sadowski

was ultimately awarded $130,032.20. The OPINON identifies Sadowski's yearly pay, on p 2, as $37,000. The OPINION also identifies Sadowski's improper termination as December 31, 1996. The November 2, 2000 Common Pleas ORDER OF COURT making the award occurred less than four years after Sadowski's firing. Based on the stated pay, over 3 and ½ years pay was included in the full back pay calculation. Wolfgang's back pay calculation should be based upon a similar calculation; annual pay rate for 16 years, with the additional award for items authorized in the whistle blower law and as appropriate for Constitutional violations including restoration of benefits, seniority, interest, expenses and attorney fees for the periods of time during which Wolfgang had professional representation.

CONCLUSION

The Petition for a Writ of Certiorari should be granted along with summary and immediate reinstatement of Wolfgang to employment with the City of Pittsburgh as a Project Engineer if not the higher position of Project Manager. This could be the first step to providing a remedy with relationship to the violations. A plenary review should also be performed to determine back pay, pension eligibility, attorney fees and restoration of seniority and benefits.

To sustain Wolfgang's unlawful termination without compelling job reinstatement and meaningful fair recompense is to condone a circumventing route around the protections afforded by the First Amendment.

Respectfully submitted:

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Supreme Court, U.S.
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No. 2

In The

Supreme Court of the United States

Ray Wolfgang,

Petitioner

v.

City of Pittsburgh Department of Personnel & Civil Service Commission,

Respondent

On Petition for a Writ of Certiorari
To the Supreme Court of Pennsylvania
Western District

APPENDIX
TO
PETITION FOR A WRIT OF CERTIORARI

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i. SELECTED TRANSCRIBED OPINIONS, ORDERS, FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: THE ORDER SOUGHT TO BE REVIEWED

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1. . Supreme Court of Pennsylvania Western District, Ray Wolfgang v. City of Pittsburgh, Department of Personnel and Civil Service Commission, No. 138 WAL 2007, July 18, 2007,ORDER

ORDER

PER CURIAM

AND NOW, this 18th day of July, 2007, the Petition for Allowance of Appeal is hereby DENIED.

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2. Commonwealth Court of Pennsylvania, Ray Wolfgang v. City of Pittsburgh, Department of Personnel and Civil Service Commission, No. 1554

C.D. 2006, February 20, 2007, MEMORANDUM OPINION and ORDER

MEMORANDUM OPINION

Ray Wolfgang (Wolfgang) appeals *pro se* from the July 27, 2006, order of the Court of Common Pleas of Allegheny County (trial court), which affirmed the determination of the Pittsburgh Civil Service Commission (Commission) that Wolfgang is not entitled to collect any damages as a result of his improper dismissal by the City of Pittsburgh (City). We affirm.

This case has an extremely long history, and we briefly summarize its relevant parts as follows. Wolfgang is a former project engineer in the traffic division of the City's Department of Public Works. In October of 1991, Wolfgang's position was eliminated for economic reasons as part of a City workforce reduction, and Wolfgang was laid off pursuant to section 20.1 of the General Civil Service chapter of the Act commonly referred to as the Second Class

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City Code[1] (Civil Service Act), 53 P.S. 23454. Wolfgang appealed the lay off to the Commission, arguing, *inter alia*, that the City violated the Civil Service Act by laying him off before less senior project engineers in the Department of Construction

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[1] Act of May 23, 1907, P.L. 206, *as amended*, added by section 1 of the Act of June 20, 1947, P.L. 663, 53 P.S. 23454. In pertinent part, that section provides:

> If for reasons of economy,... or for any other reasons it becomes necessary for any city of the second class to reduce the number of employes then, the city shall follow the following procedure:
>
> Second. If the number of employes eligible for retirement under the pension fund of said city, if any, is insufficient to effect the reduction in number desired by said city ... then *the reduction shall be effected by suspending the last employe or employes regardless of title or classification* ... Such removal shall be accomplished by suspending in numerical order, commencing with the last employe appointed, all recent appointees until such reduction shall have been accomplished. Whenever the number of such employes shall be again increased in numbers, or if any vacancies occur, the employes suspended under the terms of this act shall be reinstated to that former class before any new appointees are appointed in reverse order to their suspensions.

53 P.S. 23454 (emphasis added).

and Engineering.[2] The Commission disagreed and denied Wolfgang's appeal.

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Upon further appeal, the trial court affirmed. Thereafter, Wolfgang appealed to this court, and, by order dated June 20, 1996, we upheld the validity of Wolfgang's economic dismissal from his position, holding that for purposes of section 20.1 of the Civil Service Act, the City could properly effectuate economic staff reductions according to departmental, rather than City-wide, seniority. *Wolfgang v. City of Pittsburgh, Department of Personnel and Civil Service Commission*, (Pa. Cmwlth. No. 3566 C.D. 1995, filed June 20, 1996), *rev'd*, 563 Pa. 188, 758 A.2d 1178 (2000)).

However, on October 3, 2000, our supreme court, in a single sentence *per curiam* order, granted

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[2] Before the Commission, Wolfgang maintained that he had been chosen for layoff for political rather than economic reasons. However, acting in its role as factfinder, the Commission rejected this argument base on substantial, credible testimony to the contrary. Consequently, it now has been established that Wolfgang was laid off for economic reason, and we decline to consider Wolfgang's continued arguments to the contrary, (*see, e.g.*, section 2(c) and 3(a) of Wolfgang's brief). *Stover v. Department of Environmental resources*, 636 A.2d 1275 (Pa. Cmwlth. 1994) (stating that credibility determinations are for the Commission, a factfinder, not the court).

Wolfgang's petition for allowance of appeal, reversed this court's June 20, 1996, order and remanded to the trial court for proceedings consistent with its decision in *Sadowski v. City of Pittsburgh*, 559 Pa. 387, 741 A.2d 180 (1999), which held that section 20.1 of the Civil Service Act requires strict adherence to the "last hired/first fired rule."[3] *Wolfgang v.*

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City of Pittsburgh, Department of Personnel and Civil Service Commission, 563 Pa. 188, 758 A.2d 1178 (2000).

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[3] In *Sadowski*, a laid-off City employee appealed her discharge to the Commission, claiming, in part, that the City's action violated section 20.1 of the Civil Service Act because at least 150 less senior persons in her department were not terminated. The Commission denied Sadowski's appeal; however, the trial court reversed and ordered that Sadowski be reinstated to her position with full back pay. On further appeal, this court construed section 20.1 to mean that reductions by seniority applied to employees performing the exact same job, and, therefore, the City did not violate that section of the Civil Service Act when it laid off Sadowski.

Our supreme court granted allocatur and reversed this court's determination. Reiterating the principle that no civil service employee may be discharged in any manner or by any means other than those specified in the relevant civil service statute, the court noted that section 20.1 of the Civil Service Act states in the clearest of terms that the City, in reducing the size of its work force for economic reason, must lay off "the last employee" hired, regardless of title or classification. 53 P.S. 23454. Based on this language, our supreme court rejected this court's contrary interpretation.

Thereafter, Wolfgang and the City attempted, but failed, to negotiate a settlement to resolve the issues created by the October 3, 2000, order. On September 9, 2002 Wolfgang filed a Complaint in Mandamus with the trial court, seeking an order requiring that Wolfgang be reinstated to his former position with full back pay and benefits. On April 17, 2003, following a status conference, the trial court issued an order holding Wolfgang's Mandamus Complaint in abeyance and remanding the matter to the Commission to determine the amount of damages due to Wolfgang.

Following evidentiary hearing, the Commission issued its opinion and order on February 2, 2006, after reviewing position papers submitted by the parties, testimony taken at the hearings and the "mountain of material" supplied by Wolfgang in support of his claim for damages. (Commission op. at 1.) With regard to Wolfgang's claim for lost wages, the Commission found that Wolfgang had been fortunate enough to find other work with the Borough of Sewickley in 1993, and, although the new position initially paid Wolfgang less than his salary with the City, Wolfgang ultimately earned more than he ever would have earned had he remained in the City's employ. The Commission found that the same could be said with

respect to most of Wolfgang's additional damage claims.[4] Based on

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these findings, the Commission dismissed Wolfgang's appeal. The Commission concluded that, although Wolfgang's termination was unlawful under *Sadowski*, Wolfgang was not entitled to recovery where he did not establish that he experienced any damage as a result of the unlawful discharge. (Commission op. at 4-5.) Wolfgang appealed, and, by order dated July 27, 2006, the trial court affirmed the Commission's decision. Wolfgang now appeals to this court.[5]

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[4] In addition to the claim for lost wages, the Commission considered Wolfgang's damage claims for: loss of a Civil Service Protected job; tuition reimbursement; lost personal days, sick days and vacation days; lost social security earnings credit; pension benefits; and additional travel expenses, job search costs and legal expenses. The Commission concluded that there was no authority under which Wolfgang could collect damages for the loss of a Civil Service protected job of for legal expenses. In rejecting Wolfgang's other damage claims, the Commission concluded that Wolfgang was not entitled to recovery because with respect to those amount, as with his claim for lost wages, Wolfgang is in a better position now than if he had stayed with the City. (Commission op. at 2-4.)

[5] Where, as here, the trial court takes no additional evidence, our scope of review of a Commission decision is limited to determining whether the Commission violated constitutional rights, manifestly abused its discretion or committed an error of law or whether the Commission's

Initially, however, we must consider two of the City's arguments. First, the City maintains that we should quash Wolfgang's appeal because Wolfgang does not cite supporting case law or applicable statutory language in his brief but, instead, offers only a discussion of perceived wrongs and new allegations of violations by the City. The City contends that Wolfgang's argument is indistinguishable from that described in *Kochan v. Department of*

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Transportation, Bureau of Driver Licensing, 768 A.2d 1186 (Pa. Cmwlth. 2001), wherein this court quashed the appeal of a *pro se* appellant whose argument read like "a personal vendetta against the legal system" and consisted of nothing other than "a rambling discourse with innuendoes of unfairness void in substance of both law and fact." *Id.* at 1188. We acknowledge that, in part, Wolfgang uses his

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decision was not based on substantial evidence. *City of Philadelphia v. Civil Service Commission of the City of Philadelphia*, 565 Pa. 265, 772 A.2d 962 (2001). We are bound by the Commission's findings of fact where such findings are based on substantial evidence, and we cannot weigh testimony or substitute our discretion for that of ;the Commission, insofar as they do not abuse their discretion. *Fusaro v. Civil Service Commission of the City of Pittsburgh*, 328 A.2d 916 (Pa. Cmwlth. 1974), *overruled on other grounds by Sadowski*.

brief as a forum to recount the myriad injustices he believed were visited upon him at the time of his termination and during the resulting fifteen years of litigation. However, unlike the situation in *Kochan*, Wolfgang's brief is not defective to the point that it constitutes a violation of Pa. R.A.P. 2101.[6] Because, here, we are able to discern the nature of the matter at hand and conduct meaningful appellate review, we will no impose the sanction of quashing Wolfgang's appeal.

The City also contends that various legal theories raised by Wolfgang are outside this court's jurisdiction because Wolfgang did not, and could not, raise them before the Commission.[7] Specifically, Wolfgang claims entitlement to attorney's fees, legal expenses, out-of-pocket costs and exemplary damages because of the City's alleged violations of the Whistleblower Law,[8] the U.S. Civil Rights

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[6] Pa. R.A.P. 2101 requires briefs and reproduced records to conform to the requirements of the appellate rules to the extent possible, and, if the defects in the brief or reproduced record are substantial, the appeal may be quashed or dismissed.

[7] The Commission's jurisdiction does not extend beyond the grant of authority over matters touching on the enforcement and effect of provisions the Civil Service Act. *See* section 6 of the Civil Service Act, 53 P.S. 23436; *see also, Mack v. Civil Service Commission*, 817 A.2d 571 (Pa. Cmwlth. 2003) (holding that the Philadelphia Civil Service Commission lacked subject matter jurisdiction over a matter that did not come within the express power granted by legislative enactment).

[8] Act of December 12, 1986, P.L. 1559, 43 P.S. 1421-1428.

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Law, 42 U.S.C. 1988, the First Amendment of the U.S. Constitution, and the City's municipal pension fund act.[9] We agree with the City that this appeal is limited to those issues properly raised before and decided by the Commission. Pa. R.A.P. 1551(a). Here, as agreed to by the parties, the *only matter* decided by the Commission was the proper calculation of damages resulting from Wolfgang's improper dismissal under the Civil Service Act. This court is limited to determining the appropriateness of that relief.

With respect to the merits, Wolfgang argues that the City is required to reinstate him to his former position with "full back pay," which by its plain terms includes all lost wages and benefits (as calculated by Wolfgang), as well as interest and litigation costs, from the date of his unlawful termination in 1991. Wolfgang asserts that the trial court, the Commission and the City violate the supreme court's October 3, 2000, order by providing him with anything less.[10] We disagree.

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[9] Act of August 1, 1975, P.L. 169, 53 P.S. 23581-23592.

[10] In his statement of questions involved, Wolfgang lists nine separate issues; however, in eight of these, he simply uses different wording to make the same point. Specifically, Wolfgang maintains that, by order of the supreme court in *Wolfgang*, he is entitled to reinstatement with full back pay, including lost wages and the value of any benefits, without any reductions or offsets. Moreover, Wolfgang asserts that the City's actions before and after Wolfgang's lay-off warrant an

We note that nothing in the supreme court's remand order expressly directs that Wolfgang be reinstated or that he be awarded back pay or any other damages. Instead, the order merely remands the matter for proceedings consistent

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with *Sadowski*. Although Wolfgang is correct that the prevailing employee in *Sadowski* was awarded reinstatement with back pay, the court in that case never addressed the proper means to calculate the amount of back pay due. However, in cases that have addressed this issue, our supreme court has long recognized the general principle that, when measuring damages in unlawful termination cases, credit must be allowed for any amount that the illegally removed employee received from other employers during the period of the illegal separation. *See Delliponti v. DeAngelis*, 545 Pa. 434, 681 A.2d 1261 (1996) (holding, in a case where civil service rules relating to lay-offs applied, that an employee whose position was improperly eliminated, was entitled to full back pay were the employer did not prove mitigation of damages from other employment); *Cornman v. City of Philadelphia*, 380 Pa 312 111 A.2d 121 (1955) (noting that the high costs connected with the lawful reinstatement of illegally dismissed employees would be greatly

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award of legal expenses and exemplary damages to Wolfgang. Our statement of Wolfgang's argument fairly encompasses all these assertions.

reduced once those costs were offset by earnings received by the employees while unlawfully terminated); *Steiner v. City of Reading*, 341 Pa. 164, 19 A.2d 283 (1941) (directing that an employee with civil service status who was improperly removed from his position be reinstated and reimbursed for salary withheld due to the unlawful dismissal, less occupational earnings received during that period); *Seltser v. City of Reading*, 340 Pa. 573, 17 A.2d 872 (1941) (awarding an employee removed in violation of the civil service law reimbursement for the difference between salary received and salary to which he was entitled); 30 A.2d 177 (Pa. Super. 1943); *see also, Seltzer v City of Reading*, 30 A.2d 177 (Pa. Super. 1943) (holding that the civil service statute provision giving unlawfully discharged employee reinstatement with "full pay" is satisfied by restoring the tenure of his service and preventing loss in income, i.e., reimbursement for salary withheld less sums received by him

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meanwhile in any other occupation). Such authority clearly contradicts Wolfgang's unsupported statement that the phrase "full back pay" allows for not reductions.[11]

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[11] To the extent that Wolfgang argues that the calculation of his lost wages should include pay raises reflecting positions to which he may have been promoted, such speculative matters cannot be relied on for purposes of calculating back pay. *See Trosky v. Civil Service Commission*, 539 Pa. 356, 652 A.2d 813 (1995).

Wolfgang also argues that the City should not be permitted to take these particular reduction where it does not preclude other, non-aggrieved employees form earning outside pay at a second job. Wolfgang contends that the City's attempt to apply special work restrictions "only to Wolfgang's freedoms regarding his choice of opportunity of livelihood, where Wolfgang's choices do not interfere with his City employment obligations, is solely and act of retaliation by the City." (Wolfgang's brief at 58-59.)

We believe the trial court captured the essence of this argument when it stated:

> Although [Wolfgang's] brief is somewhat difficult to follow, it appears that his primary contention on appeal is that his full-time position as an engineer with the Borough of Sewickley should be considered a "side job" or a "second job". He argues that he could have worked both full-time with the City of Pittsburgh and full-time with the Borough of Sewickley. Thus, he reasons, that normal rules of mitigation of damages do not apply here, but he should receive as damages in this case the full salary and benefits that he would have earned with the City

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> of Pittsburgh without deducting the salary and benefits he has earned with the Borough of Sewickley.
>
> (Trial ct op. at 3.) Like the trial court, we can find no support in the law or the record to support Wolfgang's argument. In fact, Article VII, section 707 of the City's Home Rule Charter, entitled "Multiple Employment Prohibited." prohibits City employees form holding any other compensated position in City government *or any other government* (with specific exceptions not applicable here). 302 Pa. Code 11.7-707 (emphasis added).

As to Wolfgang's claim for damages in the nature of pension benefits, attorney's fees, legal expenses, other costs and exemplary damages, we note that, in large part, Wolfgang bases his right to such damages on various allegations of wrongdoing by the City. Beginning with the City's "real" reason for maliciously terminating Wolfgang, Wolfgang charges that the City violated his rights under the First Amendment and the Whistleblower Law, pursued an unnecessarily vexatious fifteen-year litigation and continues to persecute Wolfgang and engage in cover-up tactics. (*See* Wolfgang's brief at 61-63, 66, and 69.) As previously discussed, these matters are not before us. Moreover, to the extent that any of these additional damage claims are before us, we have meticulously considered the voluminous record in this case and, based on the lack of a statutory of factual basis for such awards, we are

satisfied that the trial court did not err in dismissing these claims.

Finally, Wolfgang makes assertions of Commission impropriety. Wolfgang alleges that the City and the Commission colluded to keep Wolfgang's evidence off the record both during the discovery process and in conducting

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the Commission hearings. As to these vague claims of procedural error and wrongdoing, Wolfgang offers, and we find, no supporting statutory provision, case law or record evidence.

We recognize the difficulties and expense that Wolfgang endured during years of litigation to prove that his layoff was unlawful. Nevertheless, because there is no evidence to establish that the Commission's calculations were legally improper or factually inaccurate, we must conclude that Wolfgang has failed to prove recoverable damages. Accordingly, we affirm.

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ORDER

AND NOW, this 20th day of February, 2007, the order of the Court of Common Pleas of Allegheny County, dated July 27, 2006, is hereby affirmed.

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3. Court of Common Pleas of Allegheny County, Raymond Wolfgang v. City of Pittsburgh, Department of Personnel and Civil Service Commission, No. S.A. 92-986, July 27, 2006, MEMORANDUM and ORDER OF COURT.

MEMORANDUM

This is an appeal from the February 2, 2006 decision of the Civil Service Commission of the City of Pittsburgh ("the Commission").

This case has a long procedural history. In 1991, the Appellant, Ray Wolfgang, was laid off from his employment as an engineer with the City of Pittsburgh. Nearly one hundred fellow city workers were likewise laid off at that time as part of a reduction of the work force for economic reasons. The Court of Common Pleas (the Honorable Joseph M. James) found that Mr. Wolfgang's termination was proper, but the Pennsylvania Supreme Court's ruling in *Sadowski v. City of Pittsburgh*, 741 A.2d 180 (Pa. 1999), which had ordered that a City of

Pittsburgh employee be reinstated to her position with full back pay. In the meantime, however, Mr. Wolfgang obtained employment as an engineer with the Borough of Sewickley.

The case was assigned to me for disposition consistent with the Supreme Court's remand order. Accordingly, after status conference with the parties, and at their request, I remanded the matter

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to the Commission. The parties agreed that the purpose of the hearing was for the Commission to determine what monetary damages Mr. Wolfgang has incurred as a result of his termination.

The Commission then conducted a full evidentiary hearing on the matter. The Commission considered the salary and benefits Mr. Wolfgang would have earned with the City of Pittsburgh had his employment not been terminated there. The Commission also considered the salary and benefits Mr. Wolfgang has been able to earn in his job with the Borough of Sewickley. The Commission heard evidence on all damages claims put forth by Mr. Wolfgang.

At the conclusion of the hearing, the Commission determined that Mr. Wolfgang has not suffered any monetary damages as a result of his termination by the City. The evidence showed that Mr. Wolfgang has been able to do better financially

with the Borough of Sewickley then he would have done with the City of Pittsburgh.

Mr. Wolfgang now appeals that decision of the Commission. The standard for review is as follows:

> Where a full and complete record is made of the proceedings before a municipal civil service commission a reviewing court must affirm the adjudication unless it is in violation of the constitutional rights of the appellant or not in accordance with law, the procedural provisions of the local agency law are violated or a finding of fact of the commission necessary to support its adjudication is not support by substantial evidence.
>
> Section 754 of the Local Agency Law, 2 Pa.C.S. 754, *Civil Service Commission v. Poles*, 132 Pa.Cmwth. 593, 573 A.2d 1169, 1171-1172 (1990).

Although Appellant's brief is somewhat difficult to follow, it appears that his primary contention on appeal is that his full-time position as an engineer with the Borough of Sewickley should be considered a "side job" or a "second job". He argues that he could have worked both fulltime with the City of Pittsburgh and full-time with the Borough of Sewickley. Thus, he reasons, that normal rules of mitigation of damages do not apply here, but he should receive as damages in this

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case the full salary and benefits that he would have earned with the City of Pittsburgh without deducting the salary and benefits he has earned with the Borough of Sewickley.

There is no support in the law or the record for Appellant's argument. Applying the applicable standard of review, the Commission's adjudication of February 2, 2006 should be affirmed.

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ORDER OF COURT

AND NOW, 27th day of July, 2006, upon consideration of the Appeal of Raymond Wolfgang from the Adjudication of the Civil Service Commission of the City of Pittsburgh, decided February 2, 2006, it is hereby ORDERED, ADJUDGED and DECREED s follows:

The decision of the City of Pittsburgh Civil Service Commission is AFFIRMED; the appeal of Raymond Wolfgang is DISMISSED.

4. . Civil Service Commission of the City of Pittsburgh, Raymond Wolfgang v. City of Pittsburgh Department of Personnel and Civil Service Commission, February 2, 2006, FINDINGS OF FACT AND CONCLUSIONS OF LAW and ORDER.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter has a very long history pre-dating the appointment of this Commission which has now sat some 13 years. Mr. Wolfgang was terminated form the City in 1991 for reasons of economy. This matter has been litigated in the Court of Common Pleas as well as the Commonwealth Court and has now been returned to this Commission for a calculation of damages, it being found that Mr. Wolfgang's dismissal was in violation of Sadowski v. City of Pittsburgh, 741 A.2d 180 (1999).

We have taken testimony on this matter on more than one occasion and, as a result of our order to compel documents, have had access to a mountain of material as supplied by Mr. Wolfgang in support of his claim of either $562,390.73 in damages as stated in one document or for $2,554,148.05 as stated in another. Regardless of the amount he has asked us

to consider, the legal analysis of our decision is unaffected and remains the same.

For a period of time Mr. Wolfgang was unemployed and was then fortunate to find work with the Borough of Sewickley. He has prospered at this position and is earning more money than he most likely ever could have with the City, along with a corresponding benefits package.

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The first and greatest item in Mr. Wolfgang's claim for damages is lost wages. He claims that had he not been improperly discharged he would have earned $339,963.97 from the City. The City has calculated the amount of money that Mr. Wolfgang would have earned up to and including the year 2003 and his cumulative total would have been $566,122.00. Mr. Wolfgang does not deduct from his claim for lost wages the money he has earned with his current employer, which is $618,072.09, or $51,950.09 more than if he had remained with the City.

In 1993 Mr. Wolfgang was hired by the Borough of Sewickley. His income at Sewickley remained less than he would have made while at the City until the year 1997. From that point on he earned more money each and every year than his comparable City position would have paid. In the

final year of our calculations, 2003, Mr. Wolfgang would have earned $50,897 had he been employed by the City and instead earned $69,573.88 while working for the Borough of Sewickley, or almost 37% more.

Mr. Wolfgang claims as part of his damages $101,000 for loss of a Civil Service protected job. He states that, on average, one could expect involuntary separations from non-civil service positions every seven years. Mr. Wolfgang does not cite any authority for this argument and attempts to project job search costs etc. for such involuntary separation of his remaining 15 year work life. Such a claim is specious at best and certainly not recognized in any theory of law or damages known in America jurisprudence. This is true particularly in light of the fact that Pittsburgh has been officially designated as a 'distressed City' under the provisions of Act 47.

Mr. Wolfgang makes claims for tuition reimbursement, some of which occurred before he left his employ with the City. As the City correctly points out in their material, such a claim

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would have been more properly the subject of a grievance procedure, which Mr. Wolfgang never filed. Further, Mr. Wolfgang took college credits after leaving the City (although a listing of such was never presented) and admittedly, many of those courses

were paid by his current employer. Further, the City's tuition reimbursement program was a wholly discretionary benefit and was the subject of the appropriate collective bargaining agreements that stated the City "may set aside..." monies for the program. It cannot be established that Mr. Wolfgang would have received this benefit that was subsequently reduced due to the City's distressed condition. Again, it appears that Mr. Wolfgang did indeed obtain more money for tuition reimbursement from Sewickley than he would have had he remained with the City.

Mr. Wolfgang makes a claim for lost personal days, sick days and vacation days. He breaks these items out separately from his salary with the City and then claims interest on them. These items are not separate and distinct from the salary that he would have received while working at the City. He was paid his salary and within that salary were included these items that he now attempts to recover separately. To recognize this claim would be to give Mr. Wolfgang a double, or even triple, recovery. At Mr. Wolfgang's current position, testimony was offered by his current supervisor that as Mr. Wolfgang is in a managerial position, he is permitted to take paid time off from work as needed. Again, in all likelihood Mr. Wolfgang is in a better position now than had he stayed working for the City.

Mr. Wolfgang makes a claim of $35,000 for lost "social security earnings credit." As discussed above, Mr. Wolfgang made more money at his

current employer and as a matter of fact his Social Security earnings credits are greater now than they would have been and he is not entitled to a double recovery.

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Mr. Wolfgang makes a claim for almost $51,000 in pension benefits. It was established that at his current employer he opted out of the retirement package and instead chose to invest those amounts in a private IRA. As an employee of the City Mr. Wolfgang would have been required to contribute a portion of his salary to his pension. Also, Mr. Wolfgang must report the portion of his pension that has been paid by his employer in order to properly calculate damages for pension. Assuming that such contributions by the employee and the employer are a percentage of his income, as is the case in most every instance, Mr. Wolfgang is again in a better position with his pension than had he not been terminated by the City.

Mr. Wolfgang also makes claims for additional travel expenses (he has to travel further for his current job), job search costs and legal expenses. First, legal expenses in American jurisprudence are not permitted unless specifically allowed by statute. Mr. Wolfgang has cited no such statute. Mr. Wolfgang may indeed have incurred job search costs and additional travel expensed, but these efforts

have resulted in him obtaining a position where he makes more money. The City is entitled to any offset if we permit his claim for these items and Mr. Wolfgang's increased income as a result of his termination are considerable and certainly outweigh any claim for damages he has for these items.

A final not about Mr. Wolfgang's claim for interest at 7%. Statutory interest rates are variable. Were we to consider his claims and award him interest for any item, we could not arbitrarily pick 7%.

Conclusions of Law

Mr. Wolfgang was terminated from the City. His termination was found to be in violation of *Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa. 1999).* However, it does not

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logically follow that because he was laid off improperly that he is automatically entitled to recovery. The simple fact of the matter is that Mr. Wolfgang is in a substantially better position now than had he not been discharged. To permit him any recovery would be to permit him a double recovery. Mr. Wolfgang has to establish that he has experienced damages, and leaving a lower paying job for one with better pay and at least equivalent benefits, and most certainly more security, does not establish a case for any award of them.

We find that Mr. Wolfgang did not experience any damages and accordingly dismiss his appeal.

ORDER

AND NOW, THIS 2nd DAY OF February 2006, the Civil Service Commission of the City of Pittsburgh dismiss the appeal of Raymond Wolfgang.

End of page 5

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5. Supreme Court of Pennsylvania Western District, Raymond Wolfgang v. City of Pittsburgh, Department of Personnel and Civil Service Commission, No. 0676 W.D. Alloc. Dkt. 1996, October 3, 2000, 563 Pa. 188, 758 A.2d 1178 (2000), ORDER

ORDER

PER CURIAM

AND NOW, this 3rd day of October, 2000, we **GRANT** the Petition for Allowance of Appeal, and we **REVERSE** the Order of the Commonwealth Court of June 20, 1996 and **REMAND** to the trial

court for proceedings consistent with our decision in Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa. 1999).

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6. Commonwealth Court of Pennsylvania, Raymond Wolfgang v. City of Pittsburgh, Department of Personnel and Civil Service Commission, No. 3566 C.D. 1995, June 20, 1996, MEMORANDUM OPINION and ORDER.

MEMORANDUM OPINION FILED: June 20, 1996

Raymond Wolfgang (Wolfgang), a former project engineer in the traffic division of the City of Pittsburgh's (City) Department of Public Works, appeals from an order of the Court of Common Pleas of Allegheny County (trial Court) which affirmed the decision of the City's Civil Service Commission (Commission) upholding the validity of Wolfgang's economic dismissal from his position.

Wolfgang was laid off when his position was eliminated as part of a City Workforce reduction pursuant to section 20.1 of the General Civil Service portion of the Second Class City Code (Civil Service Act).[1] Wolfgang learned of the layoff in a letter, dated October 2, 1991 and signed by Alex Sciulli, the Acting Director of the Department of Public Works,[2] and Sophie Masloff, then Mayor of the City. (R.R. at 0.) Wolfgang appealed the layoff to the Commission, alleging that he was not the proper person to be laid off and that his position was not eliminated for reasons of economy or efficiency. Specifically, Wolfgang argued that he should not have been laid off because the City retained other project engineers, employed in the Department of Engineering and Construction, with less seniority than he had. In addition, Wolfgang maintained that he had been chosen for layoff for political rather than economic reasons.

At the Commission hearings on Wolfgang's appeal, the City presented Sciulli's testimony and Wolfgang testified on his own behalf. Sciulli testified that Mayor Masloff asked him to assume the role of

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[1] Act of June 20, 1947, P.L. 663, amending the Act of May 23, 1907, P.L. 206, 53 P.S. 23454

[2] Sciulli also served as Director of the Department of Engineering and Construction. On September 9, 1991, pursuant to section 111.02 of the Pittsburgh Code, Mayor Masloff appointed Sciulli to the position of Deputy Director of the Department of Public Works, to exercise the powers and discharge the duties of that position until the appointment of a new Director. (R.R. at 199.)

Acting Director of the Department of Public Works in an effort to improve the City's fiscal Condition. (R.R. at 26-27.) To that end, he was to evaluate the Department of Public Works in relation to other departments and make recommendations to increase efficiency and reduce costs. (R.R. at 23-24.) Among his recommendations, Sciulli suggested that the City could consolidate all traffic engineering functions within one department to avoid a duplication of effort.[3] (R.R. at 23-24.) Mayor Masloff implemented this recommendation and eliminated the project engineer position in the Department of Public Works; because Wolfgang was the only project engineer in the Department of Public Works, the elimination of this position resulted in his layoff. (R.R. at 26.) Sciulli testified that the City's job reductions in the Department of Public Works, including Wolfgang's, stemmed from the City's need to balance the budget, and were carried out on a strictly economic basis with consideration given to the efficiency of the City's operations. (R.R. at 26-27.) On cross-examination, Sciulli admitted that he did not consider the length of service of the project engineers in the Department of Engineering and Construction

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[3] According to Sciulli, Wolfgang was essentially a traffic engineer, supervising a group that answered traffic inquiries. Because these responsibilities were duplicated in the Department of Engineering and Construction, Sciulli felt that it was in the City's best interests to consolidate these functions; therefore, he recommended that the group supervised by Wolfgang be merged into the traffic division of the Department of Engineering and Construction, and that the traffic engineering group in the Department of Public Works be abolished. (R.R. AT 24-26.)

before deciding to eliminate the project engineer position in the Department of Public Works. (R.R. at 30-31.)

Wolfgang testified that, initially, he was appointed as a project engineer in the inspection division of the Department of Public Works in 1986. (R.R. at 68-69, 117, 120, 201-02.) He stated that, at the time of his transfer, to his knowledge, there was no change in his job description, rate of pay or grade, and that he would retain all seniority rights for that position. (R.R. at 69-70.) Wolfgang also testified that he believed several non-economic factors influenced the decision to eliminate his position, specifically: 1) his position as employee representative on the Municipal Pension Board where he had raised questions concerning the propriety of the City's conduct; 2) his involvement in a neighborhood zoning dispute during which he supported a position contrary to the Mayor's office; 3) his pending appeal regarding a tuition reimbursement which Wolfgang felt the City owed him; 4) his past testimony against Sciulli in several court proceedings; and 5) his failure to support the Mayor in her last campaign for office. (R.R. AT 82-83.) However, on cross-examination, Wolfgang admitted that he never discussed any of these matters with Sciulli, (R.R. at 103, 107), and, other than his own belief that these activities were the true reason he was targeted for layoff, Wolfgang presented no evidence that the decision to eliminate his position was inspired by his political views.

After considering this evidence, the Commission denied Wolfgang's appeal, and, upon further appeal, the trial court affirmed,[4] following the Commission's analysis which was based on Gaul v. City of Philadelphia, 384 Pa. 494, 121 A.2d 103 (1956) and Fusaro v. Civil Service Commission of the City of Pittsburgh, 328 A.2d 916 (Pa. Cmwlth. 1974).[5]

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[4] The trial court issued an order affirming the Commission on April 18, 1994 which Wolfgang appealed to this court. However, the parties agreed that Wolfgang's exhibits had been omitted from the record certified to the trial court and stipulated to a remand so that the trial court could hear Wolfgang's Motion for Reconsideration. After a supplement to the certified record was filed in October 1994, the trial court ;reconsidered the matter with a complete record and once again affirmed the Commission and dismissed Wolfgang's appeal. (Trial ct. op. at 2.)

[5] During the pendency of the matter before the trial court, Wolfgang moved to consolidate four additional actions with the instant matter. These included three statutory appeals Wolfgang has pending against the City's Municipal Pension Board and one general docket matter which Wolfgang filed against former Mayor Masloff and the City, raising allegations of wrongful discharge under the Whistleblower Law, Act of December 12, 1986, P.L.1559, as amended, 43 P.S. 1421-1428. In addition, Wolfgang asked that the record be reopened to take additional testimony. In its order, the trial court denied Wolfgang's request to consolidate the appeal with the other pending actions and denied his request to reopen the record. Wolfgang does not directly challenge the propriety of these denials in either his Statement of Questions Presented or in the argument section of his brief to this court; rather, he appears to argue that he has made out a claim entitling him to the protection of the Whistleblower Law, a question which is not before us.

Wolfgang now appeals to this court,[6] arguing

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[6] Where, as here, the trial court takes no additional evidence, our scope of review of a Commission decision is limited to evaluation of the record to determine whether the Commission violated constitutional rights, manifiestly abused its discretion, committed an error of law or whether the Commission's decision was not based on substantial evidence. Sammons v. Civil Service Commission of the City of Philadelphia, 673 A.2d 998 (Pa. Cmwlth. 1996). We are bound by the Commission's findings of fact where such findings are based on substantial evidence, and we cannot weigh testimony or substitute our discretion for that of the Commission, insofar as they do not abuse their discretion. Fusaro.

Wolfgang contends that we should review this case under the capricious disregard standard, claiming that the City's failure to present proper evidence necessitates use of that standard of review. Wolfgang appears to assert that, although he has presented sufficient relevant evidence establishing his seniority, the identity of the disputed positions and his qualifications for the positions, and has presented evidence of impropriety with regard to his dismissal, the City has not responded in kind. According to Wolfgang, because Sciulli's was unresponsive to these matters, the only way the Commission could have sustained its findings is if it capriciously disregarded what amounts to Wolfgang' unrebutted evidence. In making this argument, Wolfgang misunderstands the law regarding this court's scope of review.

The capricious disregard standard is appropriate where the burdened party is the only party to present evidence and does no prevail before the factfinder. Iacono v. Worker's Compensation Appeal Board (Chester Housing Authority and PMA Group), 624 A.2d 814 (Pa. Cmwlth. 1993). Here, Wolfgang does not contend that the City has presented no evidence; indeed, Wolfgang acknowledges that Sciulli testified on behalf of the City. Where, as here, both parties present

that, in laying him off, the City failed to comply with the requirements for economic reductions in the City's workforce set forth in section 20.1 of the Civil service Act, and that the Commission and trial court erred in applying Gaul and Fusaro to the present case in order to decide otherwise.

The applicable statutory language in section 20.1 of the Civil Service Act provides:

> If for reasons of economy, lack of funds, abolition of position or positions, or for any other reasons it becomes necessary for any city of the second class to reduce the number of employees then, the city shall follow the following procedure:
>
> First. If there are any employes eligible for retirement under the terms of any pension fund, then such reduction in number shall be made by retirement on pension of all the oldest in age and service;
>
> Second. If the number of employes eligible for retirement under the pension fund of said city, if any, is insufficient to effect the reduction in number desired by said city, or if there is no eligible person for retirement, or if no pension fund exists in such city, then the reduction shall be effected by suspending the last

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evidence, we must apply the substantial evidence test to review a record. Id.

> employe or employes regardless of title or classification, including probationers, provisional and substitute employes that have been appointed. Such removal shall be accomplished by suspending in numerical order, commencing with the last employe appointed, all recent appointees until such reduction shall have bee accomplished. Whenever the number of such employes shall be again increased in numbers, or if any vacancies occur, the employes suspended under the terms of this act shall be reinstated to that former class before any new appointees are appointed in reverse order to their suspensions.

53 P.S. 23454. Based on this language, Wolfgang contends that his layoff was improper because the City retained other project engineers, with less seniority, employed in other departments. We disagree.

We construed this statutory language in Fusaro, a case in which a former City street lighting engineer challenged his economic dismissal as improper under section 20.1 of the Civil Service Act, 53, P.S. 23454. Fusaro maintained that, under the clear wording of the statute, the City could not discharge individual employees for economic reasons without first discharging any employees eligible lfor retirement and, if still necessary, discharging any employees hired after the person whose position was

to be terminated was hired. We disagreed with this interpretation.

We reasoned that requiring the City to reevaluate other positions, after it had already determined a particular position to be economically unfeasible, would effect unreasonable and absurd results. In that regard, we noted that adoption of Fusaro's construction of this section of the Civil Service Act would fiscally handcuff the City by forcing it to retain unneeded employees while discharging potentially essential ones that were more recently hired, thereby severely curtailing the City's discretion of whom to fire and whom to retain. Id. Citing Gaul, we pointed out that such a situation is contrary to law because the determination that a position should be abolished for reasons of efficiency and economy is solely within the judgment and discretion of the governing authority in whom the power to eliminate the office is vested. Id.

Wolfgang asserts that extension of the Fusaro and Gaul rationale to this situation is unwarranted. Wolfgang points out that neither Fusaro nor the law it interpreted, section 20.1 of the Civil Service Act, 53 P.S. 23454, refers to departments. In fact, Wolfgang maintains that because Fusaro was concerned with disparate positions or titles, rather than with disparate departments, it is distinguishable from the present case.[7] Moreover,

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[7] Wolfgang contends that the argument in Fusaro was based on an interpretation requiring the City to discharge any employee hired after the person in the position to be terminated

according to Wolfgang, the potential for City-wide difficulties which we discussed in Fusaro cannot be shown in the type of departmental reorganization involved in this case.

Wolfgang's attempt to distinguish Fusaro requires that we now determine whether the same or similar positions should be considered across departmental lines for purposes of section 20.1 of the Civil Service Act. Obviously, Wolfgang believes that compliance with the statute requires that persons with the same job titles be considered on a City-wide basis, with layoffs based solely on seniority, regardless of department. On the other hand, the City maintains that section 20.1 of the Civil Service Act, as construed in Fusaro, requires only that the City show that the reduction was due to reasons of economy, and that in determining proper persons for layoff, the inquiry is limited to same positions within the same department. Section 20.1 of the Civil Service Act does not address whether economic layoffs should be carried out according to city-wide or departmental seniority; however, by reading the statute in conjunction with other applicable law, we

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was hired. Wolfgang maintains that he makes no such argument here but, rather, limits his claims to those holding identical positions and title, i.e., project engineer, even providing the names of seven contested individuals. Thus, Wolfgang argues, Fusaro has no connection to this controversy because, in that case, Fusaro, as the City's sole street lighting engineer, could not be compared to any other employee, whereas this case involves persons whose seniority could have been compared because they were employed in the same or similar positions, albeit in different departments.

conclude that the City can properly effect economic reductions according to position on a department-by-department basis.

In ruling on Fusaro, this court relied upon the Pennsylvania Supreme Court's holding in Gaul that the elimination of a position for reasons of economy is a matter solely within the judgment of the governmental authority vested with the power to eliminate the office.[8] Here, the City operates under the provisions of a Home Rule Charter, 302 Pa. Code 11.1-101 – 11.8-813, and the Pittsburgh Code, 101.01 – 1015.02. The City's administrative affairs are divided among several independent departments, each headed by a director appointed by the Mayor, including, inter alia, the Department of Public Works and the Department of Engineering and Construction. Pittsburgh Code 111.01, 119.01 and 120.01. The power to appoint and remove employees in a given department is vested in the director of that department, section 701 of the Home Rule Charter, 302 Pa. Code 11.7-701,[9] making each City

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[8] In Gaul, the Pennsylvania Supreme Court stated quite clearly that a "municipality may do away with an office created by it, though the effect is the removal of an employee from his situation." Id., 384 Pa. 494, 500, 121 A.2d 103, 107 (1956).

[9] At the time of Wolfgang's layoff, the Department of Public Works had no duly appointed Director, and Sciulli, as Acting or Deputy Director of the Department of Public Works, was not vested with the authority to appoint and remove employees. Pittsburgh Code 111.02. However, where there is no appointed department head, the power to appoint and remove employees in an operating department rests with the Mayor, as Chief Executive Officer. Sections 201, 204 (h), 209,

department a separate entity for purposes of appointing and removing employees, with each department director as an independent hiring authority.

Thus, under the rulings in Gaul and Fusaro, it is clear that each department director has the sole discretion to determine whether a given position in that department should be eliminated for reasons of economy, with that decision impacting on that department alone.[10] Adoption of Wolfgang's interpretation of section 20.1 would mean that an act of discretion by the director of one department might result in another department losing needed employees and being compelled to hire a particular person, a result which directly conflicts with a department head's authority to hire and fire employees within the department. Thus, the proper interpretation of section 20.1 is that layoffs under that section are to be made by job title within a particular department.[11]

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210 of the Home Rule Charter, 302 Pa. Code 11.2-201, 11-2-204 (h), 11.2-209, 11.2-210; Pittsburgh Code 111.01 (e) and 111.02. Thus, here Mayor Masloff, could, and did, act on Sciulli's recommendation to eliminate the position of project engineer in that Department.

[10] Of course, once a director determines that a given position in the department should be eliminated, he or she is bound by section 20.1 of the Civil Service Act to lay off employees in that position in inverse seniority order. 53 P.S. 23454.

[11] Moreover, contrary to Wolfgang's assertion, adoption of his interpretation could still pose problems for the City. As the trial court pointed out, once having decided to eliminate a

Here, as part of the City-wide economic reduction,[12] it was decided that a project engineer position would be eliminated from the Department of Public Works. Wolfgang was the only project engineer in that department and, therefore, seniority was not an issue and he was laid off. Because this reduction followed the framework established by the legislature and the courts, we conclude that the City complied with section 20.1 of the Civil Service Act, 53 P.S. 23454, when it eliminated Wolfgang's position, and the Commission committed no error of law in upholding Wolfgang's layoff.

Accordingly, we affirm.

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position in the department, a department director should not be required to examine every other department to see if less senior persons in the same titled position exist, and to determine whether elimination of any of those positions would benefit the economy. To hold otherwise would mean that layoffs could create a domino effect of transfers from department to department and, thus, interfere with departmental continuity and expertise, severely limiting the City's ability to manage. (Trial ct. op. at 3-4.)

[12] Wolfgang also argues that his layoff was politically, not economically, motivated. In this regard, we need only note that the Commission credited Sciulli's testimony that the layoff was done for economic reasons. Credibility determinations are for the Commission, as factfinder, not the court. Stover v. Department of Environmental Resources, 636 A.2d 1275 (Pa. Cmwlth. 1994). Thus, although Wolfgang testified otherwise, we cannot disturb the Commission's finding where, as here, Sciulli's testimony provided substantial evidence to support that finding.

ORDER

AND NOW, this 20th day of June, 1996, the order of the Court of Common Pleas of Allegheny County, dated November 14, 1995, is hereby affirmed.

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7. Court of Common Pleas of Allegheny County, Raymond Wolfgang v. City of Pittsburgh, Department of Personnel and Civil Service Commission, No. SA 986-92, November 14, 1995, OPINION and ORDER OF COURT.

OPINION

Appellant, Raymond Wolfgang was employed by the Appellee, City of Pittsburgh, as a project engineer in the Department of Public Works. On October 2, 1991, his position was eliminated and he

was laid off along with nearly one hundred fellow city employees as part of a much publicized reduction of the work force for economic reasons. Appellant appealed the layoff to the City of Pittsburgh Civil Service Commission alleging that he was not the proper person to be laid off and that the reason for the elimination of his position was not for reasons of economy or efficiency.

Before the Civil Service Commission, Appellant alleged that although he was employed in the Department of Public Works as a feasibility of all the subsequently filled positions to determine whether economy could be effectuated by termination of any of those positions. Fusaro v. Civil Service Commission of the City of Pittsburgh, 16 Pa. Cmnth. 1,328 A.2d 916 (1974).

The City is not required to examine every department to determine if less senior project engineers exist. If this were so, every layoff would create a domino effect of transfers from department to department. Any departmental expertise or continuity would be lost and Appellee's ability to manage its employees would be severely limited. The City must be permitted to make managerial decisions without creating chaos within its work force. Fusaro, supra.

Appellant complains that his discharge was politically motivated. The Commission chose to accept the testimony of Acting Director of the Department of Public Works, Alex Sciulli, that the

layoff was for reasons of economy. Appellant testified otherwise. The Commission heard the testimony and made its decision based on the weight and credibility of that testimony. The decision of the Commission is not against the weight of evidence produced. Accordingly, this Court will not set aside their findings, since sufficient evidence is of record. Where the findings are based on substantial evidence, we will not weigh the testimony and substitute our discretion for that of the Commission. Guetton v. Pittsburgh 344 Pa. 219 25 A.2d 351 (1952).

Appellant requests that this Court consolidate three statutory appeals involving actions taken by the Municipal Pension fund board. Separate and distinct factual records were made in the respective actions before the Commission and the Municipal Pension Fund Board. A consolidation of those appeals would not avoid a multiplicity of hearings or otherwise reduce costs. Pa. R.C.P. 213 (a). As a result, the Appellant's consolidation request is denied.

A fourth action, filed at law, concerns a cause of action for wrongful discharge under what is commonly referred to as the "Whistleblower" statute. 43 Pa. C.S.A. 1421 et seq. That is a ;separate cause of action, and despite the appellant's contentions to the contrary, involves different legal principles and standards of proof. Appellant's request for consolidation of this action is denied.

Finally, Appellant request that the record be reopened and additional testimony be taken. The Commission found that the record was complete and sufficient. Appellant was resent at all times and represented by counsel. No request for additional evidence was made to the Commission. A review of the extensive record form the Commission shows that no additional evidence is required. Appellant's request for addition evidence is denied.

ORDER OF COURT

AND NOW, to wit, this 14th day of November 1995, it is ORDERED, ADJUDGED and DECREED that the decision of the City of Pittsburgh Civil Service Commission is affirmed and the appeal of Raymond Wolfgang is dismissed. Appellant's Motion to Consolidate SA-986 of 1992 with SA-3284 of 1991, G.D. 92-6181, SA 92-192 and SA 92-193 is here by denied.

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8. City of Pittsburgh Civil Service Commission, Raymond Wolfgang v. City of Pittsburgh Department of Personnel & Civil Service Commission, March 19,

1992, BACKGROUND, FACTS, ISSUE, DISCUSSION, and ORDER

BACKGROUND

This case arose on appeal from a termination as part of an economy reduction effort by the City. The appellant maintains he was hot the proper party to be reduced since others with the same job title but in another department were not reduced despite being less senior-thus violating Section 20.1 of the Civil Service Act. Appellant maintains that the Fusaro v. Civil Service Commission of the City of Pittsburgh decision (328.A.2d 916 (Pa. Cmwlth. 1974) is distinguishable from the instant case in that nothing in the facts of Fusaro addressed persons in the same or similar positions.

The City maintains that Section 20.1 as construed by the Civil Service Commission and by the Commonwealth Court in Fusaro, supra, requires only that the City show the reduction was for reasons of economy and that in determining proper persons the inquiry is limited to same positions within the same department.

FACTS

This matter came before us as an appeal filed by Raymond Wolfgang ("Wolfgang") pursuant to Rule XI of the Rules of the Civil Service Commission of the City of Pittsburgh ("Commission") as a result of the elimination of his position as Project Engineer in

the Department of Public Works (T:11/12/91 at 4). On October 2, 1991, Mr. Wolfgang received a letter signed by Alex Sciulli ("Sciulli"), Acting Director of the Department of Public Works and the Honorable Sophie Masloff, Mayor of the City of Pittsburgh, informing him that his position was eliminated for reasons of economy (T:11/12/91). Thereafter, Wolfgang filed a timely Affidavit of Appeal, alleging that he was not the proper employee to be reduced (T:11/12/91 at 4).

Public hearings on the appeal were held on November 12 and 26, 1991, at which Wolfgang was represented by legal counsel. Commission records established that Wolfgang was an employee of the City of Pittsburgh since May 12, 1975 and, since August 4, 1986 had been a Project Engineer in the Department of Public Works. This is a non-competitive career service position. At the time of the elimination of his position, Wolfgang worked in the Traffic Division of the Department; his duties were those of a Traffic Engineer and he supervised three employees (T:11/12/91 at 12).

Mr. Sciulli was the Director of the Department of Engineering and Construction (T:11/10/91 at 10). On September 9, 1991, the Honorable Sophie Masloff appointed Mr. Sciulli to the position of Acting Director of the Department of Public Works pursuant to Section 111.02 of the City Charter (Wolfgang Exhibit C). The City Charter provides that an Acting Director has all of the powers of a

Department Director with the exception of the powers of

End of page 1

appointment and dismissal. The Mayor, as the Chief Executive Officer of the City, has the authority to supervise all subordinate employees which includes the ultimate power to appoint and remove City employees including Deputy Directors (Section 204 of the City Charter, Sections 113.01 - 113.03 of the Pittsburgh Code.)

As Acting Director, Mr. Sciulli was charged by the Mayor with the responsibility for making recommendations for economy and efficiency in the Department of Public Works in light of the need to make budget reductions necessary to ease the City's fiscal situation (T:11/10/91 at 14). Sciulli determined and recommended the elimination of the position of Project Engineer, since the functions being performed in that position were duplicated by personnel in the Department of Engineering and Construction (T:11/10/91 at 12,14). Wolfgang was the only Project Engineer in the Department of Public Works (Commission records). Other reductions occurred in the Department of Public Works at the same time as Wolfgang was notified of the elimination of his position (T:11/10/91 at 41).

Since Alex Sciulli was the Acting Director of the Department of Public Works, Mayor Masloff executed the letter which advised Wolfgang that his position had been reduced (Commission Exhibit).

Wolfgang presented evidence that, after his position was eliminated, Project Engineers remained in the Department of Engineering and Construction. Some of these employees had less seniority, measured in terms of the date of their first employment by the City in any capacity, than he did (Wolfgang Exhibits A&B). There was not testimony presented as to the functions these employees were actually performing at the time the decision was made to reduce Wolfgang's position. It is undisputed that Wolfgang was the only Project Engineer employed in the Department of Public Works.

Wolfgang has testified as to his belief that his dismissal was motivated by reasons other than economy and efficiency, specifically: his service as employee representative to the City Pension Board; his involvement in a neighborhood zoning dispute; the fact that he had, in the past, testified in a court case in a manner critical to Acting Director Sciulli; his pending appeal on a tuition reimbursement issue; and the fact that, as a Democratic Committeeman, he did not support the Mayor in her 1989 campaign for the Party's nomination (T:11/26/91 at 21-22). Wolfgang conceded that he had no evidence that Acting Director Sciulli was aware of these activities and Sciulli never discussed these matters with Wolfgang (T:11/26/92 at 42,46). He presented no

evidence that the decision to eliminate his job was motivated in any respect by his political or other view.

ISSUE

Should same titled positions be considered across departmental lines and the least senior employee be laid off regardless of department?

End of page 2

DISCUSSION

The applicable statutory language is Section 20.1 of the General Civil Service Statute. It reads:

> If for reasons of economy, lack of funds, abolition of position or positions, or for any other reasons it becomes necessary for any city of the second class to reduce the number of employees then, the city shall follow the following procedure:
>
> First. If there are any employes eligible for retirement under the terms of any pension fund, then such reduction in number shall be made by retirement on pension of all the oldest in age and service;

> Second. If the number of employes eligible for retirement under the pension fund of said city, if any, is insufficient to effect the reduction in number desired by said city, or if there is no eligible person for retirement, or if no pension fund exists in such city, then the reduction shall be effected by suspending the last employe or employes regardless of title or classification, including probationers, provisional and substitute employes that have been appointed. Such removal shall be accomplished by suspending in numerical order, commencing with the last employe appointed, all recent appointees until such reduction shall have bee accomplished. Whenever the number of such employes shall be again increased in numbers, or if any vacancies occur, the employes suspended under the terms of this act shall be reinstated to that former class before any new appointees are appointed in reverse order to their suspensions.

In this matter the Appellant held the position of "Project Engineer" in the Department of Public works prior to his layoff. At the time of appellant's layoff employees with the same title, Project Engineer, and with less seniority than Appellant

remained in the Department of Engineering and Construction and were not laid off. Appellant contends that he should not have been laid off when less senior persons with his same job title were retained in another department.

The leading appellate decision construing Section 20.1 is Fusaro v. Civil Service Commission of the City of Pittsburgh, 328 A. 2d 916 (Pennsylvania Commonwealth Court 1974); in Fusaro the economic dismissal of Frank Fusaro was challenged as improper under Section 20.1. Mr. Fusaro's challenge was based on his interpretation of Section 20.1 which, he argued would require the City to lay off any employees less senior than he, regardless of their department or title.

The Commonwealth Court in Fusaro was not persuaded by Mr. Fusaro's desired interpretation of Section 20.1. The Court stated:

> There is no merit to the construction of the Act espoused by appellant that once a city has determined a position to be economically unfeasible, it then must reevaluate the economic feasibility of all the positions held by employees eligible for retirement or hired after the holder of the position to be terminated to see if economy could be effectuated by termination of any of those positions. Such a requirement would fiscally handcuff any city. It is absurd to believe that the Legislature would intend such a result.

Id. 328A.2d at 918.

The Fusaro court indicated that economic dismissals blindly carried out upon those last hired, regardless of department or duties, would result in the City retaining unneeded employees and discharging need ones.

End of page 3

Fusaro cites the decision of the Pennsylvania Supreme Court in Gaul v. Philadelphia, 384 PA. 494, 121 A.2d 103 (1956). In Gaul the Supreme Court held that the determination that a position should be abolished for reasons of efficiency and economy is solely within the discretion of the governing authority in whom the power to eliminate the office is vested.

We believe the City has the power to effect economic reduction according to position on a departmental basis. This is consistent with the appellate precedents and is required by the needs of good governmental management. In this Commission's opinion in Appeals of Certain Truck Drivers (April 2, 1971), aff'd SA 308 of 1971, (All'y 1972), we upheld the layoff of employees on a departmental basis, even though employees with the same job titles who were pensionable were retained.

While the requirement of Section 20.1 that pensionable employees be first laid off is no longer viable in light of federal and state law, the logic of our Truck Drivers decision is equally applicable to reductions on the basis of seniority alone. The Commission's decision contained a discussion of the earlier statute governing home rule municipalities, but the analysis is equally applicable today:

> We cannot agree with appellants' position (i.e. that penionable employees in other departments should have been laid off prior to the appellants); we believe that the proper method has been followed. The executive affairs of the City of Pittsburgh are administered by separate department heads, each charged with the responsibility of his particular department. Under Article II, Section 1 of the City Charter, 53 P.S. 22504, each department has the power to prescribe rules and regulations not inconsistent with any law or ordinance for its own government. Moreover, by virtue of Article XII, Section 2 of the Charter Act, 53 P.S. 22510, the director of each Department has the power to appoint all subordinate officers, clerks and employees, and by written order, with reasons, remove or suspend subordinate officers and clerks provided the same is not done for political reasons and provided the Civil Service law is followed.

> We conclude that under the City Charter Act, employees are hired and fired on a Departmental basis. Moreover, our own Rule indicates that discharges should be on a departmental basis. Rule X (D) (4) provides, in its first sentence, that in terminating, the "department heads" shall first discharge those eligible for pension. While that Rule, as we have pointed out above, was adopted prior to the enactment of section 20.1 of the Civil Service Act, it retains its vitality where not inconsistent therewith. Since Section 209.1 read by itself does not state whether a city-wide or Departmental basis should be used, we must read it in conjunction with prior law, of which the City Charter Act sections mentioned above are a part. Viewed in this light, Rule X (D) (4) controls and requires discharges on a Departmental basis.

Therefore, the City was within its proper authority to lay off a Project Engineer from the Department of Public Works (the appellant) notwithstanding the fact that less senior employees with the same job title were retained in another department.

ISSUE

Was Wolfgang properly informed of the reduction of his position by a letter signed by Alex Sciulli as Acting Director of the Department of

Public Works and by the Mayor of the City of Pittsburgh?

DISCUSSION

In Gaul, supra, the Supreme Court held that the determination of positions to be eliminated is properly made by the person in whom the power to eliminate the office is vested.

End of page 4

The City Charter and the Pittsburgh Code establish the Mayor as the Chief Executive Officer of the City with the ultimate power to appoint and remove City employees. While Mr. Sciulli as Acting Director lacked the authority (See Section 111.02 of the Charter) to make the decision alone, the Mayor in her capacity as Mr. Sciulli's superior could act on his recommendation. Accordingly, the appropriate persons combined to make the decision to reduce Mr. Wolfgang's position.

ORDER

AND NOW, TO WIT, THIS 19th DAY OF MARCH, A.D. 1992, it is hereby ordered that the appeal of Raymond Wolfgang is denied.

End of page 5

ii. CITATION OF OTHER RELEVANT OPINIONS, ORDERS, FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Included in the Petition for a Writ of Certiorari TABLE OF CITED AUTHORITIES p xiii)

iii. ORDERS ON REHEARING

1. Commonwealth Court of Pennsylvania, Raymond Wolfgang v. City of Pittsburgh, Department of Personnel and Civil Service Commission, No. 3566 C.D. 1995, August 23, 1996, ORDER.

ORDER

NOW, August 23, 1996, having considered appellant's application for reargument, the application is denied.

2. City of Pittsburgh Civil Service Commission, Raymond Wolfgang v. City of Pittsburgh Department of Personnel & Civil Service Commission, January 31, 1992, Letter Order

Dear Attorney MacLeod:

This letter is to inform you that at the Thursday, January 30, 1992 Civil Service Commission meeting, the Commission discussed your letter dated January 28, 1992 and Ms. Marianne Malloy's letter dated December 26, 1991, requesting the reopening of the record for further evidence in the matter of the Appeal of Raymond J. Wolfgang. This is to advise you that the Commission has denied these requests.

Very truly yours,

Philip B. Schugar
Assistant Director
Secretary & Chief Examiner

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3. Court of Common Pleas of Allegheny County, Raymond Wolfgang v. City of Pittsburgh Department of Personnel & Civil Service Commission, S.A. 986-92, June 1, 1994, ORDER OF COURT,

ORDER OF COURT

AND NOW, to-wit, this 1st day of June, 1994, pursuant to Pa. R.A.P. 1925(b), Raymond Wolfgang is hereby ORDERED to file a Statement of Matters Complained of on Appeal, no later than 14 days form the date of this Order.

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4. Court of Common Pleas of Allegheny County, Raymond Wolfgang v. City of Pittsburgh Department of Personnel & Civil Service Commission, S.A. 986-92, June 21, 1994, ORDER OF COURT

ORDER OF COURT

AND NOW, to-wit, this 21st day of June, 1994, it is hereby ORDERED, ADJUDGED and DECREED that the Motion for Reconsideration of Court Order dated April 18, 1994, is DENIED.

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iv. JUDGMENT SOUGHT TO BE REVIEWED

Supreme Court of Pennsylvania Western District, Ray Wolfgang v. City of Pittsburgh, Department of Personnel and Civil Service Commission, No. 138 WAL 2007, July 18, 2007,ORDER (and its preceding determinations, transcribed in section i, at p 11 - 64)

v. [1(f)]. CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

(verbatim text)

A. Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1423.

Protection of employees

(a) Persons not to be discharged.—No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or

a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste. [Purdon's Statutes 43 P.S. 1423]

B. Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1424.

Remedies

(a) Civil action.---A person who alleges a violation of this act may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation.

(b) Necessary showing of evidence.---An employee alleging a violation of this act must show by a preponderance of the evidence that, prior to the alleged reprisal, the employee or a person acting on behalf of the employee had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer or an appropriate authority.

(c) Defense.---It shall be a defense to an action under this section if the defendant proves by a preponderance of the evidence that the action by the employer occurred for separate and legitimate reasons, which are not merely pretextual.

(d) Civil service employees.—An employee covered by civil service who contests a civil service action, believing it to be motivated by his having made a good faith report, verbally or in writing, of an instance of wrongdoing or waste, may submit as admissible evidence any or all material relating to

the action as whistleblower and to the resulting alleged reprisal. [Purdon's Statutes 43 P.S. 1424]

C. Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69 Chapter 25, 43 P.S. 1425.

Enforcement

A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate. [Purdon's Statutes 43 P.S. 1425]

D. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, **(section 20.1)**

If for reasons of economy, lack of funds, abolition of position or positions, or for any other reasons it becomes necessary for any city of the second class to reduce the number of employees then, the city shall follow the following procedure:

First. If there are any employees eligible for retirement under the terms of any pension fund, then such reduction in number shall be made by retirement on pension of all the older in age and service;

Second. If the number of employees eligible for retirement under the pension fund of said city, if an,

is insufficient to effect the reduction in number desired by said city, or if there is no eligible person for retirement, or if no pension fund exists in such city, then the reduction shall be effected by suspending the last employee or employees regardless of title or classification, including probationers, provisional and substitute employees that have been appointed. Such removal shall be accomplished by suspending in numerical order, commencing with the last employee appointed, all recent appointees until such reduction shall have been accomplished. Whenever the number of such employees shall be again increased in numbers, **or if any vacancies occur, the employees suspended under the terms of this act shall be reinstated to that former class before any new appointees are appointed in reverse order to their suspensions.** (emphasis added) [Purdon's Statutes 53 P.S. 23454]

E. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23443, **section 11**

The offices, positions, and employments in the classified service of every city of the second class shall be arranged by the Civil Service Commission in four classes, to be designated as the exempt class, the competitive class, the non-competitive class, and the labor class. [Purdon's Statutes 53 P.S. 23443]

F. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, RULES OF THE CIVIL SERVICE

COMMISSION CITY OF PITTSBURGH, Enacted pursuant to Sections 6 and 7 of an Act entitled "AN ACT to regulate and improve the civil service of the cities of the second class in the Commonwealth of Pennsylvania, etc." P.L. 167, approved 23 May, 1907, as amended, and Act (P.L. 1207) approved 27 June, 1939 as amended, and all other Acts pertaining to the conduct of Civil Service Commissions in Cities of the second class. **RULE XVII, Commission Records, Section 1:** The Commission shall make suitable provision for the preservation and accessibility of minutes of all its meetings and public hearings; **roster cards**; eligibility lists and certifications; lists of application; and files pertaining to appeals. (emphasis added) ["CIVIL SERVICE STATUTES, AS AMENDED, & RULES GOVERNING THE CIVIL SERVICE CITY OF PITTSBURGH"]

G. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23455. **Section 21**

No person shall be appointed to or employed in any position in the classified service, in any city of the second class, until he has passed an examination, or is shown to be specially exempted from such examination, in conformity with the provisions of this act and of the rules made pursuant thereto. It shall be the duty of each appointing officer of every city of the second class to report to the Civil Service Commission forthwith, upon such appointment or employment, the name of such appointee or employee, the title of his office or employment, the

date of commencement of service by virtue thereof, and the salary or compensation thereof, and any separation of a person from the service, or other change therein, and such other information as the Civil Service Commission may require. **The Civil Service Commission shall keep in its office official rosters**, in the form of books, card-catalogs, or otherwise, of the classified civil service of the city- laborers excepted- and shall enter thereon the name of each and every person who is legally in the service of the city of the first day of July, one thousand, nine hundred and seven, and of each and every person who is thereafter appointed, employed, promoted, reduced, or reinstated in any position in such service, upon such evidence as it may require or deem satisfactory that such person was appointed to, employed, promoted, reduced, or reinstated in, the service in conformity with the provisions of this act and the rules adopted pursuant thereto. **These rosters shall be open to public inspections at all reasonable hours. The rosters shall show, in connection with each name, the grading, the date of appointment**, employment, promotion, reduction or reinstatement, the compensation of the position, the title of the position, and the date and cause of any termination of such office or employment. (emphasis added) [Purdon's Statutes 53 P.S. 23455]

H. 42 United States Code, TITLE 42—THE PUBLIC HEALTH AND WELFARE, CHAPTER 21—CIVIL RIGHTS, SUBCHAPTER I—

GENERALLY, Sec. 1983, Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any right, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. [UNITED STATE CODE SERVICE, 42 USCS 1983]

I. 42 United States Code, TITLE 42—THE PUBLIC HEALTH AND WELFARE, CHAPTER 21—CIVIL RIGHTS, SUBCHAPTER I—GENERALLY, Sec. 1988, Proceedings in vindication of civil rights

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and

Institutionalized Persons Act of 1964 [42 U.S.C. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any cost, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction. [UNITED STATE CODE SERVICE, 42 USCS 1988]

J. The United States Constitution, First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. [UNITED STATES CODE ANNOTATED, U.S.C.A. Const., Amend. I]

K. The United States Constitution, Fourteenth Amendment, Section 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any

person within its jurisdiction the equal protection of the laws. [UNITED STATES CODE ANNOTATED, U.S.C.A. Const., Amend. XIV]

L. City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23582.
Administration
Administration.—(a) The administration of the provisions of this act shall be charged to the board which shall consist of the mayor, the city controller, the president of the city council and two employees to be chosen by the employees contributing to the fund. [Purdon's Statutes 53 P.S. 23582]

M. City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23581.
Definitions
"Employee." Any person holding a city office or employed by the city in any capacity whatsoever, for which employment he is receiving regular remuneration
as an officer or employee, excluding however any independent contractor or a person compensated on a fee
basis. [Purdon's Statutes 53 P.S. 23581]

N. City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23581et seq.

v. [1(g)(i)]. SUMMARY OF THE FEDERAL QUESTIONS RAISED AND HOW THEY WERE PASSED ON BY EACH COURT

1. The Pennsylvania Supreme Court's July, 18, 2007 ORDER at No. 138 WAL 2007, denied Wolfgang's Petition for Allowance of Appeal without reason or explanation. Wolfgang's March 20, 2007, Petition for Allowance of Appeal included claims relating to Whistleblower Law and the First and Fourteenth Amendment. Beginning near the middle of p 18 Wolfgang states:

> "the Commonwealth Court contends on page 7 of its MEMORANDUM OPINION, ("Here, as agreed to by the parties, the only matter decided by the Commission was the proper calculation of damages resulting from Wolfgang's improper dismissal under the Civil Service Act."), [To which Wolfgang has not knowingly agreed, and hereby avers the contrary, and he has not limited his claims only to the Civil Service Act], what has been the determination, if any, of Wolfgang's claims, concerning violation of the Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1421 et seq., and violation of the First Amendment to the United States Constitution speech protections and Wolfgang's fair opportunity for

due process established by the Fourteenth Amendment of the United States Constitution and The City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23581 et seq. made as part of Wolfgang's September 23, 1996 Petition for Allowance of Appeal as well as inclusive in the recent and current proceedings - - and what effect does the remedy provisions within those laws have on Wolfgang's reinstatement and the calculation of his full back pay as well as the award of fringe benefits and seniority right, actual damages, costs of litigation and reasonable attorney fees and their relationship to Wolfgang's claim that because of the City's infringements upon his First and Fourteenth Amendment rights he is entitled to reasonable attorney fees authorize by the U.S. Civil Rights Law, 42 U.S.C. 1983 and 1988?"

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2. The Commonwealth Court's February 20, 2007, MEMORANDUM OPINION and ORDER, at No. 1554 C.D. 2006, were determined without regard to the Whistleblower and First and Fourteenth Amendment issues raised by Wolfgang. On p 6, 2nd paragraph of the Commonwealth Courts MEMORANDUM OPINION the court determines:

"The City also contends that various legal theories raised by Wolfgang are outside this court's jurisdiction because Wolfgang did not, and could not, raise them before the Commission. Specifically, Wolfgang claims entitlement to attorney's fees, legal expenses, out-of-pocket costs and exemplary damages because of the City's alleged violations of the Whistleblower Law, the U.S. Civil Rights Law, 42 U.S.C. 1988, the First Amendment of the U.S. Constitution, and the City's municipal pension fund act. We agree with the City that this appeal is limited to those issues properly raised before and decided by the Commission. Pa. R.A.P. 1551(a). Here, as agreed to by the parties, the *only matter* decided by the Commission was the proper calculation of damages resulting from Wolfgang's improper dismissal under the Civil Service Act. This court is limited to determining the appropriateness of that relief."

And, on p 10:

"As to Wolfgang's claim for damages in the nature of pension benefits, attorney's fees, legal expenses, other costs and exemplary damages, we note that, in large part, Wolfgang bases his right to such damages on various allegations of wrongdoing by the City. Beginning with the City's "real" reason for maliciously terminating Wolfgang, Wolfgang charges that the City violated his rights under

> the First Amendment and the Whistleblower Law, pursued an unnecessarily vexatious fifteen-year litigation and continues to persecute Wolfgang and engage in cover-up tactics. (*See* Wolfgang's brief at 61-63, 66, and 69.) As previously discussed, these matters are not before us. Moreover, to the extent that any of these additional damage claims are before us, we have meticulously considered the voluminous record in this case and, based on the lack of a statutory of factual basis for such awards, we are satisfied that the trial court did not err in dismissing these claims."

And footnote [7]

> "The Commission's jurisdiction does not extend beyond the grant of authority over matters touching on the enforcement and effect of provisions the Civil Service Act. See section 6 of the Civil Service Act, 53 P.S. 23436; *see also, Mack v. Civil Service Commission*, 817 A.2d 571 (Pa. Cmwlth. 2003) (holding that the Philadelphia Civil Service Commission lacked subject matter jurisdiction over a matter that did not come within the express power granted by legislative enactment)."

Wolfgang raised these issues in his, February 28, 2006, brief:

> "SUMMARY OF ARGUMENT

The City unlawfully terminated Wolfgang from his Project Engineer job in violation of Civil Service Act, Whistleblower Law and First and Fourteenth Amendments. The Mayor's signature was the sole legal authority on the termination letter. Thereafter, City began an orchestrated effort to ensure Wolfgang would be ousted from his 2nd paid job as elected Employee Representative on the Pension Board whereat he had made reports of wrong doing."

==========

3. On July 27, 2006, the Court of Common Pleas of Allegheny County issued its MEMORANDUM and ORDER OF COURT in the matter at S.A. 92-986:

On p 2 of the MEMORANDUM:

> "The Commission then conducted a full evidentiary hearing on the matter. The Commission considered the salary and benefits Mr. Wolfgang would have earned with the City of Pittsburgh had his employment not been terminated there. The Commission also considered the salary and benefits Mr. Wolfgang has been able to earn in his job with the Borough of Sewickley. The Commission heard evidence on all damages claims put forth by Mr. Wolfgang.

At the conclusion of the hearing, the Commission determined that Mr. Wolfgang has not suffered any monetary damages as a result of his termination by the City. The evidence showed that Mr. Wolfgang has been able to do better financially with the Borough of Sewickley then he would have done with the City of Pittsburgh.

Mr. Wolfgang now appeals that decision of the Commission. The standard for review is as follows:

Where a full and complete record is made of the proceedings before a municipal civil service commission a reviewing court must affirm the adjudication unless it is in violation of the constitutional rights of the appellant or not in accordance with law, the procedural provisions of the local agency law are violated or a finding of fact of the commission necessary to support its adjudication is not support by substantial evidence.

Section 754 of the Local Agency Law, 2 Pa.C.S. 754, *Civil Service Commission v. Poles*, 132 Pa.Cmwth. 593, 573 A.2d 1169, 1171-1172 (1990)."

Wolfgang had stated his claims relating to the Constitution in his Notice of Appeal filed with the Court of Common Pleas of Allegheny County on

February 28, 2006 at No. S.A. 92-986. On p 4 and 5 of the Notice of Appeal Wolfgang states the issues as follows:

> "6. The Commission's stated findings are inconsistent with each other and contrary to the testimony taken at the hearings and contrary to the voluminous documents entered into evidence in the form of "Position Paper" as ORDERED by the Commission. The Commission's conclusions cannot be sustained without capricious disregard of the evidence. The findings are ambiguous and erroneous and fail to cover all material issues of fact. The record is not full and complete because the hearing was not completed after submission of the "Position Papers" as the Commission had earlier set forth on July 7, 2005 the steps in the schedule moving forward through the conclusion of the Commission's proceedings. The opportunity to examine and confront witnesses for the purpose of authenticating documents submitted as evidence and to obtain additional evidence favorable to Appellant was cut short by the Commission's failure to complete the hearing. The Commission's decision to not conduct further hearing, thus precluding examination of witnesses by Appellant, as was clearly outlined in Appellant's "Position Paper", prevents evidence from being obtained by Appellant. Wolfgang's "Position Paper", made clear the relevant evidence sought. The

Commission abused its discretion in cutting short the hearing thus precluding Wolfgang's plans to present relevant material evidence. The Commission's capricious disregard of competent evidence, and findings of fact necessary to support their decision are not supported by substantial evidence, but rather reflects the bias in the Commission.

7. The Commission's findings of fact have found that Wolfgang's dismissal was in violation of Sadowski v. City of Pittsburgh, 741 A.2d 189 (Pa. 1999). The Commission makes no acknowledgement that the instant case and the Sadowski case are subsequent to City's violations of the Civil Service Act, section 20.1 as affirmed by the Supreme Court. The Commission also fails to take note that the City's unlawful termination of Wolfgang under the guise of an economy reduction was just the City's first unlawful action in a long series of unlawful actions by the City of; the Civil Service Act, the Whistle Blower Law, Wolfgang's First and Fourteenth Amendment Rights, and other laws, which the City willfully violated with malicious intentions, persistently and repeatedly to the extent of conspiracy and racketeering-- all as set forth in the evidence, (Exhibit's A-1 through HH), and the case plan outline submitted by Wolfgang to the Commission in his "Position Paper"."

Wolfgang's Brief filed with the Court on June 19, 2006, S.A. 92-986, included the same issues in Section II., THE QUESTIONS OF THE LAWS INVOLVED, A. 2), 5), 6), 13), 14), 15), and 16):

> "2) Wolfgang was a whistleblower whom the City retaliated against on October 2, 1991 by improperly terminating him from his job as Project Engineer. This action by the City violated the relevant terms of the Whistleblower Law, Act of December 12, 1986, P.L. 1559, No. 169, 43 P.S. 1421, et seq. To cover up the willful and malicious intentions of this retaliatory firing the City proffered the pretext of an economy reduction. Section 5, Enforcement, of the Whistleblower Law provides for reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award all or a portion of the costs of litigation, including reasonable attorney fees.
>
> There is little question that Wolfgang was a whistleblower under the law. The question was raised before the Pennsylvania Supreme Court as part of Wolfgang's Petition for Allowance of Appeal. The Supreme Courts' ORDER in favor of Wolfgang indicates Wolfgang should be awarded settlement which would include appropriate and applicable terms of the Whistleblower law enabling

consistency with reinstatement to his lawfully due position with full back pay. The question here is what types of damages as identified in the Whistleblower Law are to be included in the calculation of the total damages due Wolfgang as compensation to realize his full back pay and equitable amount in lieu of reinstatement--due to the hostile refusal of the City to enact such reinstatement?"

"5) The City's intention in carrying out the unlawful termination of Wolfgang was to silence Wolfgang's outspokenness concerning an improper pension payout scheme being undertaken at the behest of the City and its Officials. The consequence of the City's execution of Wolfgang's improper termination was an abridgment of Wolfgang's speech--First Amendment retaliation--a wanton violation of the First Amendment provisions of the United States Constitution. In fact the City claimed that Wolfgang was not eligible to continue in his paid employment as the Employee Representative on the Municipal Pension Fund Board because of his, (improper), termination from his employment as Project Engineer. But this condition was the direct result of unlawful acts which the City had orchestrated and then used as excuse to silence Wolfgang.

There is little question that Wolfgang was speaking out about improper Pension Fund

disbursements. The question was raised before the Pennsylvania Supreme Court as part of Wolfgang's Petition for Allowance of Appeal. The Supreme Courts' ORDER in favor of Wolfgang indicates Wolfgang should be awarded settlement which would include appropriate and applicable remedies for abridgement of First Amendment rights enabling consistency with reinstatement to his lawfully due position with full back pay. The question is: should these remedies be used to insure the damage calculations result in a full back pay amount award to Wolfgang?"

"6) The subsequent events relating to Wolfgang's successful re-election to a four year term as Employee Representative on the Municipal Pension Fund Board were not anticipated by the City. The City had to again act in discordant fashion to ensure Wolfgang's outspokenness would not be heard through the forum of the Pension Board. The City, (the Mayor herself in fact), sponsored Wolfgang's removal, on December 19, 1991, from his job as Employee Representative, thus violating the Whistleblower Law, due process protections of the Fourteenth Amendment of the United States Constitution and again committing First Amendment retaliation--by Officials of the Pension Board, being led by the Mayor, against another Official, Wolfgang, of the Pension Board.

First Amendment and Due Process protections arguments were broached in Wolfgang's Petition for Allowance of Appeal to the Pennsylvania Supreme Court. Are the remedies for a victim, Wolfgang, of the City's willful and malicious infringement of these rights to be applied in a suitable fashion to achieve full back pay damages being awarded to Wolfgang along with reinstatement to his position or the equivalent to reinstatement to his position?

"13) The Whistleblower Law, Section 5., Enforcement provides for payment of not only back wages, but also full reinstatement of fringe benefits. Does pay thus include wages and benefits? And subsequently back pay thus include wages and reasonable benefits as identified by Wolfgang during the Civil Service Commissions proceedings?"

"14) The Whistleblower Law, Section 5., Enforcement provides, in part, for payment of actual damages to whistleblowers. Are out of pocket health insurance costs which Wolfgang paid directly to the City for C.O.B.R.A coverage to be reimbursed to Wolfgang?

15) The Whistleblower Law, Section 5., Enforcement provides for award of reasonable attorney fees to whistleblowers. Are attorney fees to be awarded? And are Wolfgang's out of

pocket legal expenses to also be awarded?

16) U.S.CODE TITLE 42, Chapter 21, Subchapter I, Section 1983 and 1988, Civil Action for Deprivation of Rights, (EXHIBIT BRHD), allows for payment of reasonable attorney fees as part of the costs of prevailing parties in cases relating to the cited section. May the Common Pleas Court of Allegheny County consider applicability in the instant matter?"

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4. Wolfgang's appeal to the Court of Common Pleas of Allegheny County followed the City of Pittsburgh Civil Service Commission's February 2, 2006 FINDINGS OF FACT AND CONCLUSIONS OF LAW and ORDER, S.A. 92-986. The Commission did not reference any Constitutional matters in their findings and conclusion nor their order. The Commission limited its review as stated in the Conclusions of Law beginning at the bottom of page 4 as follows:

> "Mr. Wolfgang was terminated from the City. His termination was found to be in violation of *Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa. 1999).* However, it does not logically follow that because he was laid off

> improperly that he is automatically entitled to recovery. The simple fact of the matter is that Mr. Wolfgang is in a substantially better position now than had he not been discharged. To permit him any recovery would be to permit him a double recovery. Mr. Wolfgang has to establish that he has experienced damages, and leaving a lower paying job for one with better pay and at least equivalent benefits, and most certainly more security, does not establish a case for any award of them. We find that Mr. Wolfgang did not experience any damages and accordingly dismiss his appeal."

Wolfgang's case brought his claims to the City of Pittsburgh Civil Service Commission through the conduct of hearings on September 11, 2003, May 12, May 12, 2005, July 7, 2005 and by way of his "Position Paper" as requested by the Commission. In the "Position Paper" Wolfgang recited his First Amendment violation claim beginning at the bottom of p. 36, Count 1., and the Fourteenth Amendment claim beginning near the top of p 37, Count 2, and at p 39 Count 12.:

> "Count 1. The City of Pittsburgh has willfully and maliciously violated Wolfgang's First Amendment right to free speech by wrongfully terminating him from his Project Engineer job because he spoke out against the improper pension payments being made by the Pension Board.

> Count 2. The City of Pittsburgh has willfully and maliciously violated Wolfgang's Fourteenth Amendment right to due process by terminating him from his job as Employee Representative on the Municipal Pension Fund Board."

And,

> Count 12. The City of Pittsburgh conspired with the Pension Board Solicitor to silence Wolfgang's reports of wrongdoing and then willfully neglected to attempt recovery of expenses caused by improper pension benefit payments which resulted from the erroneous advise of this Solicitor. This lack of recovery effort violated the fiduciary responsibility to the Pension Members, by the City of Pittsburgh, to seek recovery from the Pension Board Solicitor and, or, his professional liability insurer for errors and omissions."

The case arrived at the City of Pittsburgh Civil Service Commission on remand from the Supreme Court of Pennsylvania to the trial court.

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5. The October 3, 2000 Supreme Court of

Pennsylvania ORDER, No. 0676 W.D. Alloc. Dkt. 1996, was a single sentence which did not reference or address any of the Constitutional issues raised by Wolfgang. The ORDER stated:

> "**PER CURIAM**
>
> **AND NOW**, this 3rd day of October, 2000, we **GRANT** the Petition for Allowance of Appeal, and we **REVERSE** the Order of the Commonwealth Court of June 20, 1996 and **REMAND** to the trial court for proceedings consistent with our decision in Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa. 1999)."

Wolfgang had raised the Constitutional question before the Supreme Court of Pennsylvania through his Petition for Allowance of Appeal, filed September 23, 1996 at No. 676 W.D. Allocator Docket 1996. Within the QUESTIONS PRESENTED FOR REVIEW, item 1. G. asks:

> "G. Was the decision made under due process which afforded fair opportunity to determine in conformity with either the "just cause" provisions in civil service, or the case cited as controlling, Gaul, "whether there was a bona fide abolishment of plaintiff's position", and that the presumption of good faith was "overcome by evidence that the abolishment was a mere pretense or subterfuge".

And questions item 2. asks:

"2. With respect to Commonwealth Court's nondetermination of specific Whistleblower Law claim in the appeal as "a question which is not before us" (f. 5), and as confronted in Application for Reargument, did Wolfgang preserve for review questions of burden-shifting, and the appropriate function of a reviewing Court under that Law in civil service actions and civil actions and as affecting the highest form of constitutional speech?"

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6. The Petition for Allowance of Appeal to the Supreme Court of Pennsylvania followed from the Commonwealth Court of Pennsylvania, Raymond Wolfgang v. City of Pittsburgh Department of Personnel and Civil Service Commission, No. 3566 C.D. 1995, August 23, 1996, MEMORANDUM OPINION and ORDER. The Order stemming from application for reargument stated:

"Now, August 23, 1996, having considered appellant's application for reargument, the application is denied."

==========

7. At the Commonwealth Court of Pennsylvania, Raymond Wolfgang v. City of Pittsburgh Department of Personnel and Civil Service Commission, No. 3566 C.D. 1995, the MEMORANDUM OPINION and ORDER filed June 20 1996, indicates that the court did not consider the aspects of Wolfgang's claims relating to the Whistleblower Law and its inherent affect, when retaliation occurs, on the First Amendment. Footnote 5 in the MEMORANDUM OPINION states:

> "During the pendency of the matter before the trial court, Wolfgang moved to consolidate four additional actions with the instant matter. These included three statutory appeals Wolfgang has pending against the City's Municipal Pension Board and one general docket matter which Wolfgang filed against former Mayor Masloff and the City, raising allegations of wrongful discharge under the Whistleblower Law, Act of December 12, 1986, P.L. 1559, as amended, 43 P.S. 1421-1428. In addition, Wolfgang asked that the record be reopened to take additional testimony. In its order, the trial court denied Wolfgang's request to consolidate the appeal with the other pending actions and denied his

> request to reopen the record. Wolfgang does not directly challenge the propriety of these denials in either his Statement of Questions Presented or in the argument section of his brief to this court; rather, he appears to argue that he has made out a claim entitling him to the protection of the Whistleblower Law, a question which is not before us."

And, the Commonwealth Court's footnote 6 further establishes their avoidance of Wolfgang's claims when they state:

> "Where, as here, the trial court takes no additional evidence, our scope of review of a Commission decision is limited to evaluation of the record to determine whether the Commission violated constitutional rights, manifestly abused its discretion, committed an error of law or whether the Commissions decision was not based on substantial evidence. Sammons v. Civil Service Commission of the City of Philadelphia, 673 A.2d 998 (Pa. Cmwlth. 1996). We are bound by the Commission's findings of fact where such findings are based on substantial evidence, and we cannot weigh testimony or substitute our discretion for that of the Commission, insofar as they do not abuse their discretion. Fusaro.
>
> Wolfgang contends that we should review this case under the capricious

> disregard standard, claiming that the City's failure to present proper evidence necessitates use of that standard of review. Wolfgang appears to assert that, although he has presented sufficient relevant evidence establishing his seniority, the identity of the disputed positions and his qualifications for the positions, and has presented evidence of impropriety with regard to his dismissal, the City has not responded in kind. According to Wolfgang, because Sciulli's testimony was unresponsive to these matters, the only way the Commission could have sustained its findings is if it capriciously disregarded what amounts to Wolfgang's unrebutted evidence. In making this argument, Wolfgang misunderstands the law regarding this court's scope of review."

The constitutional issues raised by Wolfgang's December 14, 1995 appeal to the Commonwealth Court from the November 14, 1995 ORDER of the Common Pleas Court are evident by the writings of the Commonwealth Court in their MEMORANDUM OPINION.

The Commonwealth Court, in footnote 4 of their MEMORANDUM OPINION provides an explanation of the initial appeal to the Commonwealth Court and stipulated remand to the Court of Common Pleas as result of omission of Wolfgang's exhibits:

> "The trial court issued an order

affirming the Commission on April 18, 1994, which Wolfgang appealed to this court. However, the parties agreed that Wolfgang's exhibits had been omitted from the record certified to the trial court and stipulated to a remand so that the trial court could hear Wolfgang's Motion for Reconsideration. After a supplement to the certified record was filed in October 1994, the trial court reconsidered the matter with a complete record and once again affirmed the Commission and dismissed Wolfgang's appeal. (Trial ct. op. at 2.)"

The Commonwealth Court's ORDER states:

"AND NOW, this 20th day of June, 1996, the order of the Court of common Pleas of Allegheny County, dated November 14, 1995, is hereby affirmed."

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8. The Court of Common Pleas of Allegheny County, in the matter of Raymond Wolfgang v. City of Pittsburgh Department of Personnel and Civil Service Commission, No. SA 986-92, (3566 CD 1995), November 14, 1995, ORDER OF COURT ruled:

"AND NOW, to wit, this 14th day of November, 1995, it is ORDERED, ADJUDGED and DECREED that the decision

of the City of Pittsburgh Civil Service Commission is affirmed and the appeal of Raymond Wolfgang is dismissed. Appellant's Motion to Consolidate SA-986 of 1992 with SA-3284 of 1991, G.D. 92-6181, SA 92-192 and SA 92-193 is hereby denied."

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9. Wolfgang filed NOTICE OF APPEAL at the Commonwealth Court of Pennsylvania, Raymond Wolfgang, v. City of Pittsburgh, Department of Personnel and Civil service Commission, 3566 C.D.1995, December 14, 1995

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10. In the Court of Common Pleas of Allegheny County, Raymond Wolfgang v. City of Pittsburgh, Department of Personnel and Civil service Commission, S.A. 986-92, November 14, 1995, OPINION, & ORDER OF COURT, (the Order in question having been entered following remand from the Commonwealth Court of a previous appeal at No. 1401 C.D. 1994).

The Commonwealth Court's scope of review is discussed at the top of page 3 of the OPINION:

> "Our scope of review of the decision of the Civil Service Commission is limited. The Court must affirm the adjudication below unless the decision is in violation of the Constitutional rights of the Appellant or not in accordance with the law, or the procedural provisions of local agency law have been violated or the decision is not supported by substantial evidence. 2 Pa C.S.A. Section 754."

Beginning near the top of page 5 of the OPINION the questions of the multiple related cases is discussed as:

> "Appellant requests that this Court consolidate three statutory appeals involving actions taken by the Municipal Pension fund board. Separate and distinct factual records were made in the respective actions before the Commission and the Municipal Pension Fund Board. A consolidation of those appeals would not avoid multiplicity of hearings or otherwise reduce costs. Pa. R.C.P. 213 (a). As a result, the Appellant's consolidation request is denied.
>
> A fourth action, filed at law, concerns a cause of action for wrongful discharge under what is commonly referred to as the "Whistleblower" statute. 43 Pa. C.S.A. 1421

et seq. That is a separate cause of action, and despite the appellant's contentions to the contrary, involves different legal principles and standards of proof. Appellant's request for consolidation of this action is denied."

The ORDER OF COURT provides:

> "AND NOW, to wit, this 14th day of November, 1995, it is ORDERED, ADJUDGED and DECREED that the decision of the City of Pittsburgh Civil Service Commission is affirmed and the appeal of Raymond Wolfgang is dismissed. Appellant's Motion to Consolidate SA-986 of 1992 with SA-3284 of 1991, G.D. 92-6181, SA 92-192 and SA 92-193 is hereby denied."

==========

11. In the Court of Common Pleas of Allegheny County, Wolfgang v. City of Pittsburgh, GD 92-6181, November 2, 1993, ORDER OF COURT:

> "AND NOW, TO-WIT, THIS 2 DAY OF NOV. 1993,
>
> Defendants will within 20 days file more complete answers to plt's interrogatories 26, 58, & 59

> Plaintiff's discovery requests and motions regarding discovery are otherwise denied.
>
> Wettick, J"

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12. In the Court of Common Pleas of Allegheny County, Raymond Wolfgang, v. City of Pittsburgh, and Sophie Masloff, Mayor, City of Pittsburgh, GD 92 6181, April 1, 1992, COMPLAINT, set forth as follows:

In paragraphs 3. to 15.:

> "3. On or about October 2, 1991, Defendant Sophie Masloff terminated the employment of Plaintiff as a Project Engineer for the City of Pittsburgh by letter, attached hereto as Exhibit "A." Although such letter was purportedly signed by Alex Sciulli as Acting Director, Department of Public Works, in fact the position of Alex Sciulli was misrepresented therein, and he was merely Deputy Director, and as such, lacked the power of discharge.
>
> 4. In addition to Plaintiff's employment as a Project Engineer, Plaintiff also held at the time of his termination an

elected position as Employee Representative to the City of Pittsburgh, Municipal Pension Fund Board (hereinafter "Pension Board") a position which was compensated as an employee, and upon which Board the Mayor of the City of Pittsburgh, is also a member.

5. As Employee Representative to the Pension Board, Plaintiff made good faith reports of wrongdoing or waste without malice or consideration of personal benefit to the Board and its constituent members and to the Auditor General, and at the time of his termination was awaiting a report from the Solicitor to the Pension Board on which he was about to report or further report such wrongdoing. Briefly stated, and more fully documented in transcripts of Pension Board meetings, Plaintiff was concerned with the wrongful use of Pension Funds to fund an early retirement program for City Employees which the Mayor and City implemented prior to Plaintiff's election to the Pension Board. All of these matters were communicated as Plaintiff's intent to pursue as waste in regular newsletters to the members of the Fund.

6. The Defendant, Sophie Masloff, and the City of Pittsburgh, believed and took action consistent with such belief that Plaintiff's termination from City Employment would deprive him of the right to further serve as an Employee Representative, and at all times incident hereto, took action to terminate his employment with knowledge and belief

that the consequence of such employment termination was to deprive Plaintiff the opportunity to further serve on the Pension Board.

7. On or about December 4, 1991 Plaintiff was re-elected to the Pension Board for a four year term to begin January 1, 1992; however, Plaintiff was not permitted to occupy the position to which he was elected because the Mayor, Sophie Masloff, introduced and secured the passage of a Resolution to seat an unsuccessful candidate in his stead, consistent with her position that her termination of Plaintiff's employment as Project Engineer automatically disqualified him from further Board service. The record of that decision and related decisions is more fully set forth in Statutory Appeals heretofore filed at Nos. SA 3284 of 1991, and SA 192 and 193 of 1992, included herein as though fully set forth.

8. Plaintiff appealed the effects of his termination on his otherwise continuing Pension Board employment, ;as well as a material alteration in compensation form and amount for such Board service, in Statutory Appeals referenced above, matter which remain pending before the Court and which are related hereto.

9. In addition, Plaintiff appealed his termination to the Civil Service Commission, which issued its decision March 19, 1992, a true and correct copy of which is attached hereto as Exhibit "B," and which is being

appealed by Plaintiff in connection with the prosecution of this action, with the matters on appeal included herein as though fully set forth. Briefly stated, the functions of the Civil Service Commission have been commingled into a Department of Personnel and Civil Service Commission which has to significant extent become a rubber stamp for any decision of the Mayor; and the City and Commission perpretated fictions and pretextual methods for the elimination of persons as Plaintiff herein for political reasons to a degree that remand to the Commission would in all likelihood be a futility.

10. Although the Mayor was the decision maker in Plaintiff's termination, she did not testify and could be cross-examined; the Rules of the Civil Service Commission do not provide for discovery; the Civil Service Commission violates substantive law for the provision of public information necessary to prepare and prosecute an appeal; and in Plaintiff's case, the Civil Service Commission sustained objections to any question necessary to fully develop a case to which the Whistleblower Law is appropriate. In toto, the availability of an appeal before the Civil Service Commission under practices employed in Appellant's case is inadequate to protect and promote the purposes for which the Whistleblower Law was passed.

11. Plaintiff also made good faith

reports

concerning other wrongdoing or waste involving City business, including the prosecution of a Zoning Appeals at SA 1993, 1994 and 1995 of 1990, in which he challenged the grant of variance given to the North Side Civic Development Corporation. Although Appellant was successful in such appeal and obtained a remand, the proponents of such project, including Councilman Jake Milliones, (in charge of Finance) secured special legislation to allow such project to continue, which Plaintiff and others opposed, on ;the grounds of waste and mismanagement of City resources, at Council hearings and thereafter, including in further appeal to the Zoning Board of Adjustment. Attached hereto as Exhibit "C" is a true and correct copy of a letter which the proponents sent to the Mayor and Council requesting their influence to cease Plaintiff's advocacy.

12. Plaintiff was also making and about....

13. Other matters on which Plaintiff has concern with corrupt influence upon the determination to terminate his employ were identified to the Civil Service Commission, and include his pursuit of tuition reimbursement, his failure to support the Mayor's election bid as a Democratic Committeeman, and his prior willingness to testify adversely to Mr. Sciulli. Under the unique method in which the matter was presented by the City and allowed to be tried

by the Commission it was impossible to present these matters in a form amenable to the intent of the Whistleblower Law. The Commission is also not empowered to grant relief otherwise available under the Whistleblower Law.

14. As a result of the decision of the Mayor and City to terminate Plaintiff's employ, there is significant likelihood that the rights of free speech and association by City employees as Plaintiff will be chilled and thwarted and that a common practice employed against Plaintiff, ...

15. The good faith reports were a material and controlling factor in the decision of the Mayor and City to terminate the employment of Plaintiff and the pretextual manner in which it was accomplished, as by a facially neutral reorganization scheme in which Departmental autonomy was a pretense, fiction and sham. Plaintiff reserves the right to amend following discovery of matters which remain in the exclusive province of adverse and hostile parties."

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13. In the Court of Common Pleas of Allegheny County, Raymond Wolfgang v. City of Pittsburgh, SA 986-92, April 1, 1992; wherein Wolfgang's NOTICE OF APPEAL paragraph 23 reads:

"23. The hearings before the Commission, in essence were tried upon multiple fallacies, the first, that seniority is applied only a Departmental basis, the second, based upon a loose reading of Gaul v. Philadelphia, 384 Pa. 494, 121 A. 2d 103 (1956) that the determination to abolish a position is solely within the discretion of the governing authority, and the third, that any questioning of that decision is therefore irrelevant. As applied, particularly with the false and misleading presentation of Mr. Sciulli as the responsible officer, the sustained objection to any questioning of the means by which the decision was made, and the limitations of information necessary to effective examination, this fallacy represented a denial of the rights of confrontation, cross examination, and due process to Appellant. The Gaul case, if read, does not support the interpretation applied by the Commission to foreclose inquiry."

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14. The City of Pittsburgh Civil Service Commission,
Raymond Wolfgang v. City of Pittsburgh Department of Personnel & Civil Service Commission, March 19, 1992, BACKGROUND, FACTS, ISSUE, DISCUSSION, and ORDER considered two issues:

First, at the bottom of page 2 the Commission states the issue:

> "Should same titled positions be considered across departmental lines and the least senior employee be laid off regardless of department?"

And, near the bottom of page 4 the Commission states its second issue:

> "Was Wolfgang properly informed of the reduction of his position by a letter signed by Alex Sciulli as Acting Director of the Department of Public Works and by the Mayor of the City of Pittsburgh?

The Commission's DISCUSSION which begins at the bottom of page 4 concludes:

> "In Gaul, supra, the Supreme Court held that the determination of positions to be eliminated is properly made by the person in

whom the power to eliminate the office is vested.

The City Charter and the Pittsburgh Code establish the Mayor as the Chief Executive Officer of the City with the ultimate power to appoint and remove City employees. While Mr. Sciulli as Acting Director lacked the authority (See Section 111.02 of the Charter) to make the decision alone, the Mayor in her capacity as Mr. Sciulli's superior could act on his recommendation. Accordingly, the appropriate persons combined to make the decision to reduce Mr. Wolfgang's position.

ORDER

AND NOW, TO WIT, THIS 19th DAY OF MARCH, A.D. 1992, it is hereby ordered that the appeal of Raymond Wolfgang is denied.

==========

15. Wolfgang was party to NOTICE OF APPEAL filed at the Court of Common Pleas of Allegheny County, Raymond A Wolfgang and Mark Gibbons, jointly and severally, Appellants, vs. City of Pittsburgh, Municipal Pension Fund Board, Appellee, S.A. 92-192, January 21, 1992 states:

At paragraph 5.:

> "5. Following the election and prior to commencement of the term for which Appellants were elected the former Board, by Resolution of December 19, 1991 Exhibit "A" hereto refused to seat Appellants as they were elected, but instead seated Appellant Mark Gibbons on a "temporary" basis together with Anna Marie Lozer, who was an unsuccessful candidate in the election."

And, at paragraph 7.:

> "7. Both appellants believe and therefore aver that the temporary appointments were for the purposes of improperly affecting and upsetting the election result; is against public policy in retroactively impairing the expectation of the parties who incurred great time in expense in campaigning for the office in justifiable reliance upon the expectation that they would be able to perform the official duties for which they were chosen."

And, at paragraph 9.:

> 9. Both appellants believe and therefore aver that the Resolution, Exhibit "A" hereto were part of a deliberate scheme to maintain an apparent control by other Board members which the election, in their eyes,

would change. Special matters affecting Appellant Ray Wolfgang related to this matter are on appeal at No. SA 3284 of 1991 and this matter is further related to an appeal filed contemporaneously herewith from another Resolution which is part of such deliberate scheme."

==========

16. The Court of Common Pleas of Allegheny County, Raymond A. Wolfgang vs. City of Pittsburgh Municipal Pension Board, S.A. 3284 of 1991, December 3, 1991, ORDER OF COURT directed to allow ballot vote for Raymond Wolfgang:

"AND NOW, TO-WIT, THIS 3rd DAY OF Dec., 1991, upon consideration of the foregoing Motion for Supersedeas, Appellee, City of Pittsburgh, Municipal Pension Board is directed to allow ballot vote for Raymond Wolfgang at election December 4, 1991. This supersedeas is without prejudice to any right to question Appellant's continuing capacity to serve if elected land is not a final determination of his employment status or qualification as an employee eligible to serve, and as the circumstances ;may hereafter appear."

17. Notice of Appeal was filed in the Court of Common Pleas of Allegheny County, Raymond A. Wolfgang vs. City of Pittsburgh, Municipal Pension Board, S.A. 3284-91, filed November 15, 1991. Paragraph 3. states the attempt to prevent Wolfgang from being on the ballot for Employee Representative on the Municipal Pension Fund Board:

> "3. On or about November 6, 1991 Appellant was advised by letter from Valerie Scatena, Executive secretary to Appellee Pension Fund Board that his name will not be placed on the ballot for Employee Representative Election, a true and correct copy of which is attached hereto as Exhibit "A" and which refers to a letter dated November 5, 1991 from the Solicitor to the City of Pittsburgh Municipal Pension Fund, a true and correct copy of which is attached hereto as Exhibit "B and included herein as though fully set forth. The election is set for December 4, 1991."

18. NOTICE OF APPEAL was filed at the City of Pittsburgh Civil Service Commission in the Matter of

Raymond A.Wolfgang, Appellant vs. City of Pittsburgh, Appellee at the Department of Personnel and Civil Service Commission on October 11, 1991. In the NOTICE Wolfgang states in paragraph 3:

> "Appellant contends in the first instance that his layoff was improper because at the time of his layoff he had more seniority than other persons employed by the City of Pittsburgh in his position as Project engineer who were retained despite express statutory requirement requiring such decisions to be made on a years-of-service basis."

And, at the second sentence of paragraph 8. Wolfgang states:

> "Appellant believes, and therefore avers, that Appellee City of Pittsburgh violated express statutory requirements in the Civil Service Act, applicable to reductions in force for economy reasons by terminating his position and selecting him for layoff without proper ;regard to his seniority relative to other persons retained in comparable position of Project Engineer and subordinate Engineering positions for which Appellant was clearly qualified."

And, at paragraph 7. :

"Appellant is advised and therefore avers that specific information concerning the relative seniority and qualifications of the comparable positions and employees retained by Appellee, and other information which may be relevant to this appeal may be obtained only through discovery in these proceedings. Appellee reserves the right to submit such information and further grounds for appeal appearing in or relevant to this appeal as may appear from such necessary discovery, **including information which may tend to establish that the decision was influenced by and made for improper grounds, the consideration of Appellant's privileged advocacy and questioning**, including without limitations matters related to terms and conditions or employment in pending proceedings before the Appeals Board and **in connection with Appellant's service as Employee Representative on the Pension Board**." (emphasis added)

During the hearings before the Civil Service Commission, November 12, 1991, Wolfgang again asserted the prospect of politically motivated firing, (at R.R. 82-83 from the CERTIFIED RECORD), in the transcript of the hearing, including beginning on line 5 of R.R. 82:

"Q Specifically, what specific reasons did you have to believe that the decision

may have been influenced by political or other improper grounds?

A Well, several factors that I feel had an influence on it were my position on the Municipal Pension Board as an employee representative. I have been raising questions regarding legalities and the use of the money,

vi. OTHER MATERIALS

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1. Subscripted reference 1 from page 15 of the Petition:
Position Paper exhibit F-3, submitted to the Civil Service Commission, August 11, 2005, S.A. 92-986, was excerpt of the transcript of the June 20, 1991 municipal pension board meeting whereat on p 5 beginning on line 3 Wolfgang again made report

questioning the legality of pension payments and exhibit H, was a April 22, 1991 letter to State Auditor General who provides oversight of municipal pensions in the state of Pennsylvania:

F-3 excerpt

"Mr. Wolfgang: That I still have questions on the early retirement incentives, and if this money is coming out of the pension fund or if it's coming out of the city budget, and if it's coming out of the pension fund – it's not that I'm against better pension benefits and retirements. In fact, I'm all for it, but this isn't being applied in a fair or consistent manner, and I don't even think it's legal, according to the state law for the pension, and I think that – I just want to make my objections to it known and that I can't vote in favor of the ones that have the incentives and also the forgiveness of the penalties that are contrary to what the state law is."

H excerpt

"Dear Ms. Hafer,
I am writing to you to request that your office impose whatever controls, penalties, restraints, etc., within the authority of your office, to compel the City of Pittsburgh Pension Board to comply with Pension Act #87 of 1975.

The Pension board has offered a good retirement incentive ($375.00/month) on top of an early

retirement pension which is not being reduced in accordance with Section 8 Paragraph (b), subparagraphs (1) and (2). [Page 13 on Enclosed Copy] The $375.00/month incentive is not mentioned any where in Act #87 of 1975."

==========

2. Subscripted reference 2 from page 15 of the Petition:

Position Paper exhibit HH, submitted to the Civil Service Commission, August 11, 2005, S.A. 92-986, was transcript of January 17, 1991 municipal pension board meeting whereat on p 30 beginning on line 13 the additional annual pension cost due to the improperly enhanced pensions was identified:

"Mr. Bush: That illustrates for the non-representative employees what the worst case scenario would be for the plan, and what we are showing here is the increase in annual contribution that would have to be made by the city to the pension fund. Under A, cost of the $375 subsidy is roughly $63,000.00. That's only part of the cost. Under B,

cost of early retirement, those folks are—excuse me. The additional total cost is 437,000. I was reading the wrong line. In addition to that – that's the cost of the $375 subsidy. In addition, people are going to be retiring earlier than we would have expected and their benefits are not being reduced. That would generate an additional contribution to the plan of $720,000. Add those two together and you get down to C, you get the total of $1,163,000 annual cost."

==========

3. Subscripted reference 3 from page 15 of the Petition:

Position Paper exhibit T, submitted to the Civil Service Commission, August 11, 2005, S.A. 92-986, was excerpts of the Pa. Auditor General's audit, released August 7, 1992, wherein the table of contents, p 51, and p 58 explain at "Finding No. 3 - Improper Early Retirement Window" in part as:

"The City of Pittsburgh improperly provided municipal employees an early retirement window with certain incentives being offered to the employees to induce early retirement....."

==========

4. Subscripted reference 4 from page 16 of the Petition is excerpt from the Civil Service Commission

hearing of November 12, 1991. (R.R. 88 beginning on line 1)

Q Do you have a pending application for employment dated and received by this Commission October 7, 1991 and describes the extensive employment which you have.....

A Yes, The day after I was laid off for – my job was eliminated, I had found out that there's a job posting currently for Project Engineer. And within the next day or so, I went down to get the application, and filled out the application and turned it in on October 7th. That advertisement for existing opening as a Project Engineer, the application was accepted by the personnel department.

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5. Subscripted reference 5 from page 16 of the Petition:

November 12, 1991 Wolfgang raised the prospect of politically motivated firing at R.R. 82-83 in the transcript of the hearing before the Civil Service Commission:

Q Specifically, what specific reasons did you have to believe that the decision may have

been influenced by political or other improper grounds?

A Well, several factors that I feel had an influence on it were my position on the Municipal Pension Board as an employee representative. I have been raising questions regarding legalities and the use of the money,

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6. Subscripted reference 6 from page 16 of the Petition:

Position Paper exhibit D, submitted to the Civil Service Commission, August 11, 2005, S.A. 92-986, contains transcript excerpt of December 19, 1991 municipal pension board meeting, which in part is on p 116 beginning on line 7 the Mayor is reading from a prepared sheet:

> Whereas, the election for Employee representative for the City of Pittsburgh Municipal Pension Fund was held on December 4, 1991 and the three individuals receiving the most votes were as follows: Raymond A. Wolfgang, Mark Gibbons, Anna Marie Lozer; and
>
> Whereas, the Appeal at No. 3284 of 1991 in the Court of Common Pleas of

Allegheny County, Pennsylvania draws into question the election results.

Now therefore, be it resolved as follows: 1) Raymond A. Wolfgang has not been an employee since October 2, 1991 within the terms of the Pension Act of 1975 and therefore is not qualified to serve as an Employee Representative.....

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7. Subscripted reference 7 from page 17 of the Petition:

Position Paper exhibit C, submitted to the Civil Service Commission, August 11, 2005, S.A. 92-986, contains copies of 19 biweekly pay stubs and a 1991 W-2 form indicating wages and deductions for F.I.C.A., U.S. income tax, State income tax City and School tax and Pension for Wolfgang paid job as employee representative on the municipal pension board.

for example the pay stub for the period ending 11-17, 1991 issued from the City of Pittsburgh Municipal Pension Fund office states:

REG. 286.40
TOTAL EARNINGS 286.40
F.I.C.A. 21.91
STATE INCOME TAX 10.02

city 2.86
school 5.37
pension 14.32
TOTAL DEDUCTIONS 54.48
NET PAY 231. 92

The W-2 Wage and Tax Statement 1991 is as follows:

Box 2 Employer's name, address, and ZIP code
City of Pittsburgh
Municipal Pension Fund
919 City County Building
Pittsburgh PA 15219

Box 3 Employer's identification number
25-60 copy too blurred

Box 11 Social security tax withheld
310.62

Box 15 Medicare tax withheld
72.50

Box 19 Employee's name, address, and ZIP code
Raymond A. Wolfgang
1702 Meadville Street
Pittsburgh PA 15214

Box 24 State income tax
141.27

Box 27 Local income tax 144.03

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8. Subscripted reference 8 from page of the Petition:

(transcription not reproduced at this time)

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9. Subscripted reference 9 from page 17 of the Petition:

(transcription not reproduced at this time)

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10. Subscripted reference10 from page 19 of the Petition:

Position Paper exhibits J and L, submitted to the Civil Service Commission, August 11, 2005, S.A. 92-986, contains City's writings, which first establish Wolfgang's eligibility and qualifications for appointment to Project Manager via two letters from the Law Department, April 5 and 12, 2002, and an

eligibility list published by the Department of Personnel and Civil Service Commission dated March 30,1990, and, second a document dated July 23, 1992 provides an example of a Project Engineer Position being filled with a new appointee, ANDREW I. BAILEY, on July 27, 1992, without appointing Wolfgang per the Civil Service Act requirements of section 20.1

EXHIBIT J

April 5, 2002

Ray Wolfgang
1702 Meadville Street
Pittsburgh, PA 15214

Dear Mr. Wolfgang:

By letter dated April 3, 2002, I notified you that the City of Pittsburgh was in the process of researching the applications you made for higher paying positions during the calendar years of 1991 – 2001. A search of City records revealed that you applied for the position of Project Manager in 1995 and 1997. Our application records prior to 1995 have been destroyed.

If you have any further information regarding your applications for other positions, please forward that information to my attention immediately.

Very truly yours

Gretchen K. Love
Assistant City Solicitor

April 12, 2002

Ray Wolfgang
1702 Meadville Street
Pittsburgh, PA 15214

Dear Mr. Wolfgang:

I have reviewed your correspondence dated April 1, 2002. In that letter, you failed to provide the City with your tax returns for the calendar years 1991-2001. I requested that you provide me with copies of these returns as it has come to my attention that you receive additional income from your rental property.

I calculated your past wages I will need documentation evidencing your receipt of $7500 for working as a City Pension Representative. Also, by letter dated April 5, 2002, I notified you that the City's records indicated that you only applied for the position of Project Manager in 1995 and 1997.....

Very truly yours,

Gretchen K. Love

Assistant City Solicitor

March 30, 1990

Listed below are the results of the posting for the Non-Competitive position of Project Manager, Department of Engineering and Construction.

The Announcement for Project Manager was posted February 26, 1990 through March 16, 1990.

Listed below, alphabetically, are the names of those persons who were determined QUALIFIED for this position:

NAME

BORNEMAN....
FARBER
FISCHER
GOSS
KILLMEYER
LOCKARD
MEYER
PALSA
PERKUN
SMITH
TARDI
VENA
WERES
WOLFGANG

EXHIBIT L

TO: ALL EMPLOYEES DEPT.: Engineering & Construction
FROM: Alex G. Sciulli, P.E. DEPT.: Engineering & Construction Director
DATE: July 23, 1992
SUBJECT: NEW EMPLOYEE

Effective Monday, July 27, 1992, please welcome ANDREW I. BAILEY, P.E., to the Department of Engineering & Construction. ANDREW, a mechanical engineer, will be joining the Division of Water & Sewers as a Project Engineer. ANDREW'S previous experience has been with the private sector.

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11. Subscripted reference 11 from page 19 of the Petition:

(transcription not reproduced at this time)

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12. Subscripted reference 12 from page 20 of the Petition:

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13. Subscripted reference 13 from page 20 of the Petition:

City Reproduced Record pp R.R. 322-323, from the transcript of the May 12, 2005 Civil Service Commission hearing, S.A. 92-986, Commission Chairman Rushing, beginning on line 4:

MR. RUSHING: Well, can you present that in your paper? Otherwise, we're going to have to come back. We'll come back on another day. That's fine with me.

MR. WOLFGANG: And also, he's brought up new issues. I do want to get expert testimony from Ms. Zaspel again too on some of the issues.

MR. RUSHING: Then we're going to have to schedule another day and take some more testimony.

I want to give everyone as much time as they feel they need, and it doesn't appear we can get it done today. Okay?

MR. CORREA: Okay. Thank you.

MR. WOLFGANG: Is there a proposed date that it will be scheduled for?

MR. RUSHING: Whatever works with the calendars.

MR. WOLFGANG: Could we set that date at this time?

MR. RUSHING: This is not on the record. (Discussion off the record.) (at 10:30 a.m., the hearing was adjourned until 8:30 a.m., July 7th 2005.)

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14. Subscripted reference 14 from page 20 of the Petition:

City Supplement to the Reproduced Record pp 252-255, from the transcript of the July 7, 2005 Civil Service Commission hearing, S.A. 92-986, Commission Chairman Rushing, speaking on line 2 of p S.R.R. 252 and thereafter:

And in light of the fact that there are now – there are two witnesses who have not appeared this morning, we were going to continue the hearing.

However, since one of the witnesses has shown up, we want to extend the courtesy of having his testimony since he is here this morning.

So what we'll do is we'll ask for both parties to submit their theories of how we should calculate the damages, then we'll have the testimony from the one witness.

How long do both of you feel you'll need to submit these memorandums or briefs, whatever you want to call them? How long would you need?

MR. WOLFGANG: I would like to have it submitted about one week before the scheduling of the next hearing. And I'm not sure when you want to schedule the next hearing.

THE CHAIRMAN: How long would you need to prepare this?

MR. WOLFGANG: If you schedule the hearing next month, I'll be ready then. If you're going to schedule the hearing two months from now, then I want the full time to prepare.

THE CHAIRMAN: Mr. Correa?

MR. CORREA: I'm going to be out for at least a week, so I'd rather have it halfway through August to have the brief together.

THE CHAIRMAN: Okay. So sometime in mid August. I see we have one hearing scheduled for the 11th. So can we—

MR. WOLFGANG: How about by the week before that would be the 4th, right, August 4th?

MR. CORREA: I can't make it by August 4th because of the timing in getting that brief together. A week after would be better.

THE CHAIRMAN: That's the 18th.

MS. McCORMICK: Laura's not going to be here that week.

Why don't we set a date for the memorandum and then we can set a date for the hearing following that.

THE CHAIRMAN: Okay. Is 30 days enough to get your memorandums? That would make it the 7th of August.

MR. WOLFGANG: That's enough time. But like I requested, I would prefer to have the full time. You know, I don't want to have the memorandum in and then six months from now still be waiting for a hearing.

THE CHAIRMAN: Well, no, we will schedule a hearing in August according to everyone's calendars. We just don't know what day.

MR. WOLFGANG: Okay.

MR. CORREA: Could we do in August 14th or that – what is August 7th?

THE CHAIRMAN: August 7th I think is a Sunday.

MR. CORREA: Could we do it the 12th? August 12th, that Friday?

THE CHAIRMAN: That's a Friday. The hearing?

MR. CORREA: The briefs.

THE CHAIRMAN: The briefs.

MR. CORREA: Trial memorandum.

THE CHAIRMAN: Yes, okay. Let's have the memorandums by August 12 and then we will schedule a hearing sometime after that in the month of August.

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15. Subscripted reference 15 from page 20 of the Petition:

July 18, 2005 Civil Service Commission directive via letter to Wolfgang from the Assistant Director, Secretary and Chief Examiner of the Department of Personnel & Civil Service Commission, contained in Appellants Supplement to the Certified Record, June 23, 2006, S.C.R. p 80/83, S.A. 92-986.

July 18, 2005

Ray Wolfgang
1702 Meadville St.
Pittsburgh, PA 15214

Dear Mr. Wolfgang:

Please be advised that the City of Pittsburgh does no have an "employee handbook".

At the continuance of you public hearing on July 7, 2005, the Commission directed that both parties submit their positions in regard to the calculation of damages by August 12, 2005.

The Commission declined to schedule a continuance of the hearing until after they receive and review the position papers. You will be properly notified of the hearing continuance date.

Sincerely,

Laura J. Zaspel
Assistant Director
Secretary & Chief
Examiner

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16. Subscripted reference 16 from page 21 of the Petition:

Position Paper, submitted to the Civil Service Commission, August 11, 2005, S.A. 92-986, contains in the list on p 45 item "XVIII. Professional fees including attorneys" as part of claim for damages.

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17. Subscripted reference 17 from page 21 of the Petition:

Position Paper submitted to the Civil Service Commission, August 11, 2005, S.A. 92-986, contains on page 33 paragraph 1. a list of proposed line of questioning of Laura Zaspel:

"Wolfgang will question Laura Zaspel as a rebuttal witness:

- establish the numerous opportunities which the City was obligated to reinstate Wolfgang to job vacancies within the non-competitive class. City of Pittsburgh adherence to the Civil Service laws and rules would have mitigated the damages due Wolfgang.
- establish that City employees are not barred from holding second jobs nor are benefits, including pensions, which may be earned on those second jobs, deducted from earnings and benefits, nor do second job earnings and benefits in any way diminish the full pay earned by City employee on their City job.
- question regarding concealed and purged documents beneficial to Wolfgang's case.
- question regarding false swearing to certified record, and other process delay tactics.
- questions to clarify value of benefits included in pay and what the City's lack of an employee handbook says about these benefits; especially in regard to legal harassment of Wolfgang by Correa in his obsessive demand for Wolfgang to produce employee handbook for his second job employment.

Position Paper submitted to the Civil Service Commission, August 11, 2005, contains on page 33 et seq., paragraph 2. a list of proposed line of questioning of Valerie Sullivan:

- supplement and clarify testimony regarding Wolfgang's second job in 1991; that of

Employee Representative on the Municipal Pension Fund Board.

- exemplify the different methods and inclusions for benefit eligibility, buy back amounts, calculation of pension benefits. These differing methods so widely varying and so arbitrary that the pension fund may be looked upon as nothing short of a slush fund to reward particular groups or individuals. And likewise to punish particular individuals by hash interpretation who may be similarly situated. Wolfgang seek these same arbitrary, enhanced benefits!
- authenticate excerpts of meeting transcriopts and other documents
- testify regarding the absence of changes in the Pension Act #87 of 1975.
- questioning regarding Wolfgang's pension benefit application.
- Wolfgang intends to demonstrate that pension benefits are routinely granted without questioning of, concern for, or investigation of applicants for the reason that the applicant may be employed at a second job where they may be eligible for pension benefits. The highly unusual impairment of Wolfgang's pension benefits and the investigation concerning the possibility that Wolfgang may have pension benefits that he has earned on a second job is willful malicious conduct intended to continue inflicting more damages upon Wolfgang.

18. Subscripted reference 18 from page 21 of the Petition:

Position Paper, submitted to the Civil Service Commission, August 11, 2005, S.A. 92-986, contains at Exhibit EE, July 20, 2005 letter to Department of Personnel & Civil Service Commission:

July 20, 2005

Laura Zaspel, Secretary
Civil Service Commission
City of Pittsburgh
Department of Personnel & Civil Service Commission
Room 431 City-County Building
414 Grant Street
Pittsburgh, PA 15219

Dear Ms. Zaspel:

This afternoon my wife, Deborah, had telephoned you, at 412 255 2705, on my behalf. The purpose of the telephone call was to schedule a time that the records concerning job vacancies in the positions of Project Engineer and Project Manager, for each of the years since October 2, 1991, could be reviewed. The date the vacancies were filled and the name of

the person filling each vacancy is the information immediately requested for review.

Sandy in your office answered your telephone and indicated that you were not available. Sandy offered to help with the request, after my wife identified herself, but stated that requests for any information must be in writing.

The purpose of this letter is to again request the above information and to remind you that I had previously requested this information via formal written letters to you on the following dates: January, 26, 2004, February 4, 2004, February 12, 2004, February 14, 2004, February 23, 2004, March 1, 2004, March 8, 2004, March 14, 2004, March 20, 2004, March 27, 2004, April 3, 2004, April 27, 2004, May 5, 2004, July 17, 2004, July 26, 2004, August 4, 2004, August 11, 2004 and June 5, 2005.

Please telephone me at 412 322 0548 to advise me when I, or my representative, may review the Project Engineer and Project Manager job appointment records for the vacancies that have occurred since October 2, 1991.

Very truly yours,

Ray Wolfgang
1702 Meadville St.
Pittsburgh, PA 15214 4009
412 322 0548 telephone

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19. Subscripted reference 19 from page 22 of the Petition:

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20. Subscripted reference 20 from page 22 of the Petition:

Appellant's Notice of Appeal to the Court of Common Pleas of Allegheny County, filed February 28, 2006 with the Prothontary of Allegheny County, No. S.A. 92-986.

p 4, paragraph 6., of the Notice of Appeal:

> "6. The Commission's stated findings are inconsistent with each other and contrary to the testimony taken at the hearings and contrary to the voluminous documents entered into evidence in the form of "Position Paper" ORDERED by the Commission. The Commission's conclusions cannot be sustained

without capricious disregard of the evidence. The findings are ambiguous and erroneous and fail to cover all material issues of fact. The record is not full and complete because the hearing was not completed after submission of the "Position Papers" as the Commission had earlier set forth on July 7, 2005 the steps in the schedule moving forward through the conclusion of the Commission's proceedings. The opportunity to examine and confront witnesses for the purpose of authenticating documents submitted as evidence and to obtain additional evidence favorable to Appellant was cut short by the Commission's failure to complete the hearing. The Commission's decision to not conduct further hearing, thus precluding examination of witnesses by Appellant, as was clearly outlined in Appellant's "Position Paper", prevents evidence from being obtained by Appellant. Wolfgang's "Position Paper", made clear the relevant evidence sought. The Commission abused its discretion in cutting short the hearing thus precluding Wolfgang's plans to present relevant material evidence. The Commission's capricious disregard of competent evidence, and findings of fact necessary to support their decision are not supported by substantial evidence, but rather reflects the bias in the Commission.

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21. Subscripted reference 21 from page 23 of the Petition:

Position Paper, submitted to the Civil Service Commission, August 11, 2005, S.A. 92-986,

> "1. Wolfgang will question Laura Zaspel as a rebuttal witness:
> - establish the numerous opportunities which the City was obligated to reinstate Wolfgang to job vacancies within the non-competitive class. City of Pittsburgh adherence to the Civil Service laws and rules would have mitigated the damages due Wolfgang
> - establish that City employees are not barred from holding second jobs nor are benefits, including pensions, which may be earned on those second jobs, deducted from earnings and benefits, nor do second job earnings and benefits in any way diminish the full pay earned by a City employee on their City job.
> - question regarding concealed and purged documents beneficial to Wolfgang's case.
> - question regarding false swearing to certified record, and other process delay tactics.
> - questions to clarify value of benefits included in pay and what the City's lack of an employee

handbook says about these benefits; especially in regard to the legal harassment of Wolfgang by Correa in his obsessive demand for Wolfgang to produce employee handbook for his second job employment.

2. Wolfgang will question Valerie Sullivan as a rebuttal witness:

- supplement and clarify testimony regarding Wolfgang's second job in 1991; that of Employee Representative on the Municipal Pension Fund Board.
- exemplify the different methods and inclusions for benefit eligibility, buy back amounts, calculation of pension benefits. These differing methods so widely varying and so arbitrary that the pension fund may be looked upon as nothing short of a slush fund to reward particular groups or individuals. And likewise to punish particular individuals by hash interpretation who may be similarly situated. Wolfgang seeks these same arbitrary, enhanced benefits!
- authenticate excerpts of meeting transcripts and other documents
- testify regarding the absence of changes in the Pension Act # 87 of 1975.
- questioning regarding Wolfgang's pension benefit application.
- Wolfgang intends to demonstrate that pension benefits are routinely granted without questioning of, concern for, or investigation of

applicants for the reason that the applicant may be employed at a second job where they may be eligible for pension benefits. The highly unusual impairment of Wolfgang's pension benefits and the investigation concerning the possibility that Wolfgang may have pension benefits that he has earned on a second job is willful and malicious conduct intended to continue inflicting more damages upon Wolfgang.

3. Wolfgang will provide rebuttal testimony:

- establish revised full back pay damages calculation in accordance with testimony at the May 12, 2005 session of this hearing.
- establish damages which the City attorney has demanded be calculated by Wolfgang.
- establish other damages to Wolfgang as direct result of the City's wrongful termination of Wolfgang on October 2, 1991.
- provide testimony and evidence which may not be known by or provided by Laura Zaspel and Valerie Sullivan as outlined above.

4. City Attorney Diego Correa has interfered with Wolfgang's pension benefits and has provided allegations as evidence before the Pension Board at it's July 15, 2004 Board Meeting. Plaintiff contends that this activity by Correa has pierced the veil of privileged Attorney-Client confidentiality and intends to call Attorney Correa for questioning in all aspects of the City's

conduct toward and against Plaintiff.

- question who, or what group, is , and, has directed and coordinated the egregious and ongoing wrongful actions against Wolfgang.
- question City's delay tactics and strategy to inflict as much cost and harm as possible upon Wolfgang.
- question the set aside amount for settlement of this case with Wolfgang.

5. Plaintiff proposes to call various witness(es) to establish diminishment of Plaintiff's reputation as result of City's improper firing of him on October 2, 1991 and Attorney Correa's slanderous statement at the public meeting of the Pension Board on July 15, 2004.

B. The afore listed facts and those anticipated to be brought out through testimony and exhibits to be provided by the witnesses at the hearing will establish damages resulting from wrong doing by the City of Pittsburgh. Plaintiff contends he has suffered and will continue to suffer damages resulting from the following wrongful acts:"

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22. Subscripted reference 22 from page 25 of the Petition includes the following excerpts of the February 28, 2006 Notice of Appeal filed in the Court of Common Pleas of Allegheny County, No. S.A. 92-986

Paragraph 6.

> "6. The Commission's stated findings are inconsistent with each other and contrary to the testimony taken at the hearings and contrary to the voluminous documents entered into evidence in the form of "Position Paper" as ORDERED by the Commission. The Commission's conclusions cannot be sustained without capricious disregard of the evidence. The findings are ambiguous and erroneous and fail to cover all material issues of fact. The record is not full and complete because the hearing was not completed after submission of the "Position Papers" as the Commission had earlier set forth on July 7, 2005 the steps in the schedule moving forward through the conclusion of the Commission's proceedings. The opportunity to examine and confront witnesses for the purpose of authenticating documents submitted as evidence and to obtain additional evidence favorable to Appellant was cut short by the Commission's failure to complete the hearing. The Commission's decision to not conduct further hearing, thus precluding examination of witnesses by Appellant, as was clearly outlined in Appellant's "Position Paper",

prevents evidence from being obtained by Appellant. Wolfgang's "Position Paper", made clear the relevant evidence sought. The Commission abused its discretion in cutting short the hearing thus precluding Wolfgang's plans to present relevant material evidence. The Commission's capricious disregard of competent evidence, and findings of fact necessary to support their decision are not supported by substantial evidence, but rather reflects the bias in the Commission."

And, Paragraph 7.

"7. The Commission's findings of fact have found that Wolfgang's dismissal was in violation of Sadowski v. City of Pittsburgh, 741 A.2d 189 (Pa. 1999). The Commission makes no acknowledgement that the instant case and the Sadowski case are subsequent to City's violations of the Civil Service Act, section 20.1 as affirmed by the Supreme Court. The Commission also fails to take note that the City's unlawful termination of Wolfgang under the guise of an economy reduction was just the City's first unlawful action in a long series of unlawful actions by the City of; the Civil Service Act, the Whistle Blower Law, Wolfgang's First and Fourteenth Amendment Rights, and other laws, which the City willfully violated with malicious intentions, persistently and repeatedly to the extent of conspiracy and racketeering-- all as

> set forth in the evidence, (Exhibit's A-1 through HH), and the case plan outline submitted by Wolfgang to the Commission in his "Position Paper"."

And paragraph 1.), on page 25 of the Notice of Appeal:

> "1.) That Appellant be afforded the right of discovery by compelling the City to provide information which reveals all dates that vacancies in the positions of Project Engineer and Project Manager in the non-competitive class were filled by promotion or by new appointees since October 2, 1991; thus further establishing the repetitive circumvention, by the City, of the Civil Service Act to lockout Wolfgang from numerous positions for which he was lawfully required to be reinstated to: All in accord with the Civil Service Act, a.) Section 20.1, paragraph "Second" (requiring the reinstatement sequence of employees discharged for reasons of economy), b.) Section 1, last paragraph (which includes members of Boards within the purview of the Civil Service Commission), c.) Section 11, (specifying the four classes of positions which comprise the classified service), d.) The Civil Service Commission's Rule VIII, (requiring "Vacancies in positions in the classified service above the lowest rank or grade shall, so far as is practicable, be filled by promotion from among persons in the said department, office,

or institution who have held positions in the next lower rank or grade.") e.)The Civil Service Commission's Rule VI, Section 8, paragraph A. and B. (requiring reinstatement of employees who were placed on a preferred list due to abolition of their position for any cause).

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23. Subscripted reference 23 from page of the Petition:

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24. Subscripted reference 24 from page 25 of the Petition:
Appellant's June 19, 2006 Brief for the Court of Common Pleas of Allegheny County, S.A. 92-986 excerpt:

"II. THE QUESTIONS OF LAWS INVOLVED

II. A. Codes, Acts, Laws, and Statutes:

1) The City of Pittsburgh and its Municipal Pension Fund Board had

authorized improper payments only to selected groups and individuals in violation of Act #87 of 1975, Act 1975, Aug. 1, P.L. 169 No. 87, 53 P.S. 23581, Section 8. In addition to an unauthorized monthly enhancement of $375 per month the early retirement penalty for a reduced pension commencing prior to attaining age 60 was waived. Wolfgang repeatedly brought these improper pension payments to the attention of the Pension Board. Wolfgang had in fact made written report via letter of April 22, 1991 to the Agency responsible for oversight of Municipal Pension Funds within the State of Pennsylvania; The State Auditor General. The State Auditor General report, (EXHIBIT T), for the period January 1, 1990 to December 31, 1991, released August 7, 1992 confirmed Wolfgang's reports of improper pension payments. The City and its' Pension Board negligently failed to seek any recovery against those entities or individuals providing erroneous advise upon which the City and its Pension Board relied. The question here is what if anything can be done to undo this negligence by the City?

2) Wolfgang was a whistleblower whom the City retaliated against on October 2, 1991 by improperly terminating him from his job as Project Engineer. This action by the City violated the relevant terms of the

Whistleblower Law, Act of December 12, 1986, P.L. 1559, No. 169, 43 P.S. 1421, et seq. To cover up the willful and malicious intentions of this retaliatory firing the City proffered the pretext of an economy reduction. Section 5, Enforcement, of the Whistleblower Law provides for reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award all or a portion of the costs of litigation, including reasonable attorney fees.

There is little question that Wolfgang was a whistleblower under the law. The question was raised before the Pennsylvania Supreme Court as part of Wolfgang's Petition for Allowance of Appeal. The Supreme Courts' ORDER in favor of Wolfgang indicates Wolfgang should be awarded settlement which would include appropriate and applicable terms of the Whistleblower law enabling consistency with reinstatement to his lawfully due position with full back pay. The question here is what types of damages as identified in the Whistleblower Law are to be included in the calculation of the total damages due Wolfgang as compensation to realize his full back pay and equitable amount in lieu of reinstatement--due to the hostile refusal of the City to enact such reinstatement?

3) The pretext and subterfuge of the City's claim was apparent as Wolfgang was the most senior, (most years of service), Project Engineer. Termination of Wolfgang under the ruse of an economy reduction while keeping numerous other Project Engineers was an open violation of the General Civil Service Act, 53 P.S. 23454, Section 20.1, (EXHIBIT BRHE). The remedy for the City's unlawful action against Wolfgang is stated in the RULES OF THE CIVIL SERVICE COMMISSION CITY OF PITTSBURGH, RULE XI, SECTION 7, (EXHIBIT RBHB), as follows: "After hearing and due consideration, the Commission shall have the right to sustain, modify, or deny the appeal. If the appeal be sustained, the Commission may issue a written order directing that the appellant be restored with or without back pay to the position from which he/she was reduced or dismissed." The Civil Service Commission's own RULES succinctly and unambiguously provide for the same remedy as that ORDERED by the Pennsylvania Supreme Court in the instant case and in Sadowski v. City of Pittsburgh, decided October 27, 1999, (EXHIBIT TWO). The Supreme Court further specified "full" back pay to eliminate any doubt. (emphasis added)

Wolfgang's damages calculation should have been calculated, by the Civil Service

Commission, within the plain meaning of the plain language "back pay". No deducts or subtractions are authorized by the Civil Service Law or the Rules and Regulations of the Commission. Does back pay mean back pay, or does it mean something less than back pay? Does full back pay mean something less than full back pay?

4) The initial violation as well as each subsequent willful and malicious action contrary to the provisions of the Civil Service Act, are violations as indicated at General Civil Service Act, 53 P.S. 23458, Section 24. Those individuals purporting to, or actually, acting on behalf of the City, including the Civil Service Commissioners are identified as being subject to the penalties of the Act.

The next section of the General Civil Service Act, 53 P.S. 23459, Section 25 deems these violations to be misdemeanors, and the following section at General Civil Service Act, 53 P.S. 23460, Section 26 provides for fines and imprisonment or both at the discretion of the Court.

Even in the face of the Pennsylvania Supreme Court ORDER of October 3, 2000, the City, the City Law Department, the Department of Personnel and Civil Service Commission, City officials, and the Civil Service Commissioners willfully and maliciously refused to reinstate

Wolfgang. The City had, and has, a duty to obey the relevant ORDERS even if they were transparently invalid, which they are not.

Is the Court to consider investigation, or referral to an investigative body, of the commission of misdemeanor's by various City Officials?

5) The City's intention in carrying out the unlawful termination of Wolfgang was to silence Wolfgang's outspokenness concerning an improper pension payout scheme being undertaken at the behest of the City and its Officials. The consequence of the City's execution of Wolfgang's improper termination was an abridgment of Wolfgang's speech--First Amendment retaliation--a wanton violation of the First Amendment provisions of the United States Constitution. In fact the City claimed that Wolfgang was not eligible to continue in his paid employment as the Employee Representative on the Municipal Pension Fund Board because of his, (improper), termination from his employment as Project Engineer. But this condition was the direct result of unlawful acts which the City had orchestrated and then used as excuse to silence Wolfgang.

There is little question that Wolfgang was speaking out about improper Pension Fund disbursements. The question was raised

before the Pennsylvania Supreme Court as part of Wolfgang's Petition for Allowance of Appeal. The Supreme Courts' ORDER in favor of Wolfgang indicates Wolfgang should be awarded settlement which would include appropriate and applicable remedies for abridgement of First Amendment rights enabling consistency with reinstatement to his lawfully due position with full back pay. The question is: should these remedies be used to insure the damage calculations result in a full back pay amount award to Wolfgang?

6) The subsequent events relating to Wolfgang's successful re-election to a four year term as Employee Representative on the Municipal Pension Fund Board were not anticipated by the City. The City had to again act in discordant fashion to ensure Wolfgang's outspokenness would not be heard through the forum of the Pension Board. The City, (the Mayor herself in fact), sponsored Wolfgang's removal, on December 19, 1991, from his job as Employee Representative, thus violating the Whistleblower Law, due process protections of the Fourteenth Amendment of the United States Constitution and again committing First Amendment retaliation--by Officials of the Pension Board, being led by the Mayor, against another Official, Wolfgang, of the Pension Board.

First Amendment and Due Process protections arguments were broached in Wolfgang's Petition for Allowance of Appeal to the Pennsylvania Supreme Court. Are the remedies for a victim, Wolfgang, of the City's willful and malicious infringement of these rights to be applied in a suitable fashion to achieve full back pay damages being awarded to Wolfgang along with reinstatement to his position or the equivalent to reinstatement to his position?

7) The reoccurrences of the City's willful and malicious conduct became a pervasive, and essentially perpetual, vendetta as the City failed to reinstate Wolfgang to his position, or positions in his class which the Department of Personnel and Civil Service Commission had in fact determined him eligible to perform, and which the City was obligated to reinstate Wolfgang to; in accordance with the General Civil Service Act, 53 P.S. 23454, Section 20.1, paragraph Second, (EXHIBIT BRHE). The proscribed reinstatement process for employees dismissed due to an economy reduction, as was the City's pretextual claim as the reason for Wolfgang's termination, is stated at Section 20.1 paragraph Second, last sentence--"Whenever the number of such employees shall be again increased in numbers, or if any vacancies occur, the employees suspended under the terms of this act shall be reinstated to that former class

before any new appointees are appointed in reverse order to their suspensions."

The City was obligated to reinstate Wolfgang to vacancies in the Non-Competitive Class prior to appointing new appointees. The City failed to do this even when Wolfgang was on Project Engineer and Project Manager eligibility lists, (eligibility and qualification lists determined and compiled by the Department of Personnel and Civil Service Commission), based upon job applications such as those submitted by Wolfgang. These vacancies occurred almost immediately after Wolfgang's ruse termination. Any and all of these job vacancies were potential opportunities for the City to conclude its retaliatory vendetta against Wolfgang. But each time the City chose to unlawfully appoint new appointees to the vacancies. In addition to the specific appointees named by Wolfgang during the Civil Service Commission's proceedings the City has concealed, and refused to provide information concerning, many other instances which Wolfgang has repeatedly requested information from the City Department of Personnel and Civil Service Commission.

Should the City's repeated, unlawful, failure to appoint Wolfgang to the position of Project Manager result in back pay calculations being based upon the Project Manager pay rates?

And, should interest on back pay damages be calculated from the date of the City's first opportunity, (the Project Engineer job postings and application period of the week of October 7, 1991), for reinstatement of Wolfgang to his position?

8) The City's refusal to provide the information relating to new appointees to the numerous Project Engineer and Project Manger vacancies which occurred subsequent to Wolfgang's ruse termination is a violation of the General Civil Service Act, 53 P.S. 23455, Section 21, which requires the Civil Service Commission to keep in its office official rosters of this information. The last two sentences of Section 21, which state: "These rosters shall be open to public inspections at all reasonable hours. The rosters shall show, in connection with each name, the grading, the date of appointment, employment, promotion, reduction or reinstatement, the compensation of the position, the title of the position, and the date and cause of any termination of such office or employment." The City requires all such requests to be in writing but dozens of written requests by Wolfgang have gone unanswered. The City concealment of this information is a blatant attempt to cover-up City's ongoing and repetitive wrongdoing and unlawful actions toward Wolfgang. Should the cover-up and concealment activities, along

with other repetitive unlawful acts, of the City be taken into account to an extent warranting award of exemplary damages to Wolfgang?

9) The General Civil Service Act, 53 P.S. 23436, 23437, 23438 Section 6 and the Rules of the Civil Service Commission, RULE XVII, SECTION 1, were violated by the City. The Act requires that the Civil Service Commission prescribe, amend, and enforce rules and regulations for carrying into effect the provisions of the Act. The Commission's RULE XVII requires preservation of personnel files of employees for a period of twenty-five years after the termination of an employee. The City did not preserve Wolfgang's personnel file. Applications and documents favorable to Wolfgang and adverse to the City have been purged from Wolfgang's personnel file. This is another example of the continuum of willfully malicious actions by the City in its quest to silence Wolfgang while at the same time maximizing the hardship inflicted upon him in his efforts to obtain justice. Separately, a single violation of this nature could be shrugged off as trivial and the result of typical incompetence by the Department of Personnel and Civil Service Commission; however, the cumulative impact of numerous violations of numerous provisions of the General Civil Service Act and Sections of the Rules and Regulations of the Civil Service Commission elevates the offense to that of continued,

repetitive and ongoing retaliation against Wolfgang due to his initial whistle blowing, abuse of process, harassment, official oppression, conspiracy and other similar unlawful activities.
The question is the impact of the multitude of unlawful actions by the City. Are the unlawful acts of the City "outrageous conduct causing severe emotional distress" and of a nature sufficient to warrant awarding damages and attorney fees due to intentional infliction of emotional distress by the City?

10) The General Civil Service Act, 53 P.S. 23436, 23437, 23438 Section 6 mandates "The Civil Service Commission in each city of the second class shall:-First prescribe, amend and enforce rules and regulations for carrying into effect the provisions of this Act." Rule XI, Reductions and Dismissals, Section 7, is one of the Rules of the Civil Service Commission City of Pittsburgh. Section 7 unambiguously states "After hearing and due consideration, the Commission shall have the right to sustain, modify, or deny the appeal. If the appeal be sustained, the Commission may issue a written order directing that the appellant be restored with or without back pay to the position from which he/she was reduced or dismissed." Wolfgang's appeal was sustained by the Pennsylvania Supreme Court

and sent back to the trial court, (and subsequently the Allegheny County Court of Common Pleas ruled the Civil Service Commission to be the fact finder), for the purpose of reinstating Wolfgang to his position with full back pay and performing the proper calculation of damages due Wolfgang. The City and its' Civil Service Commission are compelled, and have a duty, to obey a Supreme Court ORDER and are barred from doing otherwise. Does the City's failure to act accordingly add impetus, and redundancy, to the payment of interest on all damage amounts dating back to the date of the first back pay calculation date of October 2, 1991, or the date of the October 3, 2000 Supreme Court ORDER?

11) 18 U.S.C., s1961(1), and s1964(c) The Racketeer Influenced Corrupt Organization, RICO, Act. The sustained pattern of misdemeanor violations of the General Civil Service Act, concealment of evidence, destruction of evidence, Whistle Blower Law violations, Constitutional Rights infringements, and Pension Act violations was orchestrated through oversight by the City of Pittsburgh Law Department of the entire cacophony of these incidents using the mail and wire communication as a catalyst. Is the Allegheny County Court of Common Pleas a competent Court to conduct review in RICO matters?

12) The Administrative Office of Pennsylvania Courts issued a laser fax, "Modification 5, Informational 5.36", dated January 20 2006 wherein post-judgment interest was addressed. The laser fax states: "Except as otherwise provided by another statute, a judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award". (EXHIBIT BRHC)
Does a constant interest rate provide for equal treatment or does a variable interest rate, such as the prime interest rate which more closely reflects the ebbs and flows of the economy, result in more equal treatment?

13) The Whistleblower Law, Section 5., Enforcement provides for payment of not only back wages, but also full reinstatement of fringe benefits. Does pay thus include wages and benefits? And subsequently back pay thus include wages and reasonable benefits as identified by Wolfgang during the Civil Service Commissions proceedings?

14) The Whistleblower Law, Section 5., Enforcement provides, in part, for payment of actual damages to whistleblowers. Are out of pocket health insurance costs which Wolfgang paid directly to the City for C.O.B.R.A

coverage to be reimbursed to Wolfgang?

15) The Whistleblower Law, Section 5., Enforcement provides for award of reasonable attorney fees to whistleblowers. Are attorney fees to be awarded? And are Wolfgang's out of pocket legal expenses to also be awarded?

16) U.S.CODE TITLE 42, Chapter 21, Subchapter I, Section 1983 and 1988, Civil Action for Deprivation of Rights, (EXHIBIT BRHD), allows for payment of reasonable attorney fees as part of the costs of prevailing parties in cases relating to the cited section. May the Common Pleas Court of Allegheny County consider applicability in the instant matter?

17) Rule VI, section 8. A of the Civil Service Commission's own Rules require Wolfgang be given preference to reinstatement to Project Engineer position vacancies that may occur in the Department of Public Works, (ALSO SEE EXHIBITS M AND N).
As recently as January 1, 2005 a vacancy for the position of Project Engineer in the Department of Public Works , (EXHIBIT S), was filled without affording Wolfgang priority in filling the position. Is the Department of Personnel and Civil Service Commission obligated to follow its' own Rules? And, was Wolfgang's property right to the position of Project Engineer again violated on January 1,

2005?

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25. Subscripted reference 25 from page of the Petition:

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26. Subscripted reference 26 from page of the Petition:

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27. Subscripted reference 27 from page of the Petition:

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This APPENDIX is:

Respectfully submitted:

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